

United States
Court of Appeals
for the Ninth Circuit

SOUTHWESTERN PUBLISHING CO., INC., a
corporation, A. E. CAHLAN, NEVADA
CITIZENS COMMITTEE, INCORPOR-
ATED, SOUTHERN NEVADA CHAPTER,
a corporation, Appellants,

vs.

CHARLES LEE HORSEY, Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Nevada

FILED

AUG 30 1955

PAUL P. O'BRIEN, CLERK

No. 14738

United States
Court of Appeals
for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

JONES, WIENER & JONES,
230 South Fifth Street,
Las Vegas, Nevada, and

MILTON W. KEEFER,
Cornet Building,
Las Vegas, Nevada, and

W. HOWARD GRAY,
Ely, Nevada, and

BRUCE R. THOMPSON,
15 East First Street,
Reno, Nevada,

For the Appellant.

RAILLI, RUDIAK & HORSEY,
425 Fremont Street,
Las Vegas, Nevada, and

CLYDE D. SOUTER,
211 Byington Building,
Reno, Nevada,

For the Appellee.

In the District Court of the United States in and
for the District of Nevada

Case No. 1025

CHARLES LEE HORSEY, Plaintiff,

vs.

SOUTHWESTERN PUBLISHING CO., INC., a
Nevada corporation; A. E. CAHLAN; JOHN
F. CAHLAN; NEVADA CITIZENS COM-
MITTEE INCORPORATED, SOUTHERN
NEVADA CHAPTER, a Nevada corporation;
A. W. BLACKMAN, VERN WILLIS, FRANK
M. BOLLIG, ABE MILLER and HARRY E.
CLAIBORNE, individually, and as Trustees of
NEVADA CITIZENS COMMITTEE INCOR-
PORATED, SOUTHERN NEVADA CHAP-
TER, a Nevada corporation; J. R. HENDER-
SON, DOES ONE to TWENTY, inclusive;
BLACK AND WHITE COMPANY, a co-
partnership; and RED AND GREEN, INC., a
corporation, Defendants.

COMPLAINT FOR DAMAGES

The Plaintiff complains of the Defendants, and
each of them, and for cause of action alleges:

I.

That the Plaintiff is a citizen of the State of
California and the Defendants, and each of them,
are citizens of the State of Nevada. The matter in
controversy exceeds, exclusive of interest and costs,
the sum of Three Thousand (\$3,000.00) Dollars.

II.

That at all times herein mentioned, Defendant, Southwestern Publishing Co., Inc., was, and is now, a corporation, organized and existing under and by virtue of the laws of the State of Nevada, and was, and is now, the owner, proprietor, and publisher of that certain daily newspaper known as the Las Vegas Review-Journal; that at all times herein mentioned, said newspaper was composed, printed, issued and published daily, except Saturdays, in the City of Las Vegas, County of Clark, State of Nevada, and was widely circulated throughout said County and in other Counties in the State of Nevada, and elsewhere, and, at the time of the defamatory publication hereinafter mentioned, as the Plaintiff is informed and believes and therefore alleges, said newspaper had a daily circulation of fourteen thousand copies, more or less.

III.

Plaintiff is informed and believes, and, upon such information and belief, alleges the fact to be, that at all times herein mentioned, Defendant, A. E. Cahlan, was, and is now, a member of the Board of Directors of Defendant, Southwestern Publishing Co., Inc., and was, and is now, the Managing Director of the said Las Vegas Review-Journal, and that, as such Managing Director, he had active charge and control of the management, conduct and policy of said newspaper, the power and authority to hire, fire, and discipline its employees and to direct their activities, and the power, duty and re-

sponsibility of editing all printed matter published in said newspaper and of ascertaining the truth and accuracy of such matter in advance of its publication, and of excluding from publication in said newspaper all untruthful and libelous matter.

IV.

Plaintiff is informed and believes, and upon such information and belief, alleges the fact to be, that at all times herein mentioned Defendant, John F. Cahlan, was, and is now, the Editor of the said Las Vegas Review-Journal, and that, as such Editor, at all times herein mentioned, he had the power, duty and responsibility of editing all printed matter published in said newspaper and of ascertaining the truth and accuracy of such matter in advance of its publication, and of excluding from publication in said newspaper untruthful and libelous matter.

V.

That at all times herein mentioned, Defendant, Nevada Citizens Committee Incorporated, Southern Nevada Chapter, was, and is now, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and at all times herein mentioned, has been variously known as and called, and is sometimes hereinafter referred to, as "The Citizens Committee", the "Nevada Citizens Committee", and "Nevada Citizens Committee, Las Vegas, Nevada".

VI.

That at all times herein mentioned, Defendants,

A. W. Blackman; Vern Willis, Frank M. Bollig, Abe Miller, and Harry E. Claiborne, were the Trustees of Defendant, Nevada Citizens Committee, and, as such, had the power, and it was their duty and responsibility to formulate the policies of said corporate Defendant, including the public statements and pronouncements of said corporate Defendant, and to supervise and direct the activities of all agents, servants and employees of said corporate Defendant, including the activities of Wilson Baden.

VII.

That at all times herein mentioned, Wilson Baden, was the Secretary-Manager of Defendant, Nevada Citizens Committee; that the Plaintiff is informed and believes, and upon such information and belief, alleges the fact to be, that, as such Secretary-Manager, Wilson Baden, at all times herein mentioned, served as the full-time paid executive officer, agent and employee of said corporate Defendant, and was its agent and representative and that he was authorized to, and it was his duty and responsibility to execute and carry into effect the general policies laid down by Defendants, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, as Trustees of said corporate Defendant, and Defendant, J. R. Henderson, as Chairman of said corporate Defendant, and that he was at all times herein mentioned acting within the scope of his authority and as the agent of the Defendants named in this Paragraph VII.

VIII.

That at all times herein mentioned, Defendant, J. R. Henderson, was the Chairman of Defendant, Nevada Citizens Committee; that the Plaintiff is informed and believes, and upon such information and belief, alleges the fact to be, that, as such Chairman, said Defendant was both a policy-making and executive officer of said corporate Defendant, and that he acted in concert with, and frequently influenced the policy-making decisions of the Trustees of said corporate Defendant, and that he was authorized, and it was his duty and liability as the agent and representative of said corporate Defendant, to execute and carry into effect the policies laid down by its Trustees.

IX.

That Defendants, Does One to Twenty, inclusive, Black and White Company, a co-partnership, and Red and Green, Inc., a corporation, are the fictitious names of defendants, whose true names and capacities, whether individual, partnership, or corporate, and whether principal or representative, are presently unknown to the Plaintiff, and when such true names and capacities are ascertained, the Plaintiff will ask leave of the Court to amend this Complaint by substituting such true names and capacities for such fictitious ones.

X.

That on and prior to the 5th day of November, 1950, the Plaintiff had resided in the State of Ne-

vada and had been duly licensed as an attorney at law in the State of Nevada for more than forty-six years, and had actively engaged in the practice of his profession for many years during said period, and through such practice had acquired and enjoyed a reputation throughout the State of Nevada, and, particularly, in Clark County, Nevada, as an honest, honorable, able and fair-minded attorney and counselor at law. That during his many years of residence in said State, the people of the State of Nevada had honored the Plaintiff with, and the Plaintiff had served the people of the State of Nevada, in numerous public offices of honor, confidence and trust, as follows: As District Attorney of Lincoln County, Nevada, from 1906 to 1909; As State Senator from Lincoln County, Nevada, from 1913 to 1914; As District Judge of the Tenth Judicial District Court in and for the Counties of Lincoln and Clark, from 1915 to 1919; As State Senator from Clark County, 1939 to 1940; As District Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, June to October, 1945; As Justice of the Supreme Court of the State of Nevada, commencing October, 1945, and culminating with the office of Chief Justice of the Supreme Court of the State of Nevada, which office of Chief Justice, Plaintiff had been elected to fill, and did fill, and the duties of which office he did perform until January 1, 1951. That in all of said offices, the Plaintiff at all times conducted and demeaned himself with honesty, integrity, fidelity and impartiality,

and at all times enjoyed a good reputation for, and the confidence of the People of the State of Nevada in, his honesty, integrity, fidelity, impartiality, fair-mindedness and legal ability.

XI.

That on or about the 5th day of November, 1950, Defendants, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually, and acting in concert as the Trustees and representatives of Defendant, Nevada Citizens Committee, and within the scope of their authority as such, and Defendant, J. R. Henderson, individually, and acting as Chairman of the Nevada Citizens Committee, and within the scope of his authority as such, and Wilson Baden, individually, and as Secretary-Manager of said Defendant, Nevada Citizens Committee, and acting within the scope of his authority as such, and Defendant, Nevada Citizens Committee, wilfully, wickedly and maliciously, conspiring, confederating, and acting in concert together, with intent thereby to injure and defame the Plaintiff in his good name and reputation as an attorney at law, and as a Judge, and as a Justice of the Supreme Court of the State of Nevada, and with the intent thereby to discredit the Plaintiff and to bring him into disrepute with the people of the State of Nevada and to subject him to public hatred, ridicule, contempt and obloquy, submitted to the defendant, Southwestern Publishing Co., Inc., with the request, and with the intent and purpose that the same be printed and published

by said Defendant, Southwestern Publishing Co., Inc., as a paid advertisement in the said Las Vegas Review-Journal, and Defendants, Southwestern Publishing Co., Inc., A. E. Cahlan, its Managing Editor, and John F. Cahlan, its Editor, wilfully, wickedly and maliciously conspiring, confederating and acting together in concert with and among themselves and with and among the other named Defendants, with the intent thereby to injure and defame the Plaintiff in his good name and reputation as an attorney at law, and as a Judge, and as a Justice of the Supreme Court of the State of Nevada, and with the intent thereby to discredit the Plaintiff and to bring him into disrepute with the people of the State of Nevada and to subject him to public hatred, ridicule, contempt and obloquy, did cause to be inserted and published, and did publish, in the Sunday, November 5, 1950, issue of said Las Vegas Review-Journal, the following words, figures and language about, and with reference to, the Plaintiff, to-wit:

“a Timely message to All Nevada Voters who believe in government Of All the people, By All the people, For All the people . . .

Vote Only For An
Impartial Candidate For
Supreme Court Justice!!

No Man whose statements show a Bias in favor of any special interest or group has any business on the bench!

The Nevada Citizens Committee
Urges You To
Vote Against
charles lee horsey
Candidate for Supreme Court Justice

The editorial reprinted herewith states the case against horsey. It is reprinted in full from a Northern Nevada newspaper, the Lovelock 'Review-Miner.'

Your Editor Plans To Vote Against Justice Horsey
on November 7th

An Editorial, by Paul K. Gardner

Your editor is going to vote against Supreme Court Justice Chas. Lee Horsey on November 7.

The reason is that he has a biased viewpoint on certain cases coming before him.

When the justice called at The Review-Miner office recently while conducting his campaign, the following conversation took place:

Editor: "What about the report that you are pro-labor?"

Justice Horsey: "I admit I am." Then he chuckled.

No justice has any business on the bench who has a bias. He is sworn to approach each case with an open mind. Each case must be considered on its merits. A judge with opinions, not subject to change, cannot do that.

By pro-labor is meant labor racketeers. The laboring man, in and out of the union, seeks only

a fair deal. The labor racketeers seek to gain ends whether fair or not.

Such a case recently came before Justice Horsey. It had to do with a law adopted in 1913. He joined with Justice Eather in declaring it unconstitutional. It took away the right of a business to prosperity without having recourse to the courts of justice by giving the right to labor racketeers to harass it.

Involved was the White Cross Drug Store of Las Vegas. There was no labor difficulty. The employees were well paid, satisfied and nonunion. The labor racketeers demanded that the store be unionized against the will of the workers and the owner. When refused, pickets were ordered in front of the store. An injunction was obtained, as we understand the matter. Justice Horsey ruled that the law under which the injunction was issued was no good. In effect, he gave the racketeers permission to put on pickets indefinitely to drive union patronage away. Such ruling enables the racketeers to force every business in the country into union contracts whether the owners or their employers were in favor of it or not. In other words, it deprives an owner from conducting a profitable business and working people of the right to work.

It makes no difference to us: Any man who is prejudiced in favor of business, labor, labor racketeers, farming or gambling, has no business on the Nevada supreme court bench.

This editorial appeared in the Lovelock Review-Miner, Oct. 26, 1950.

Urge your friends Not to vote for horsey for Supreme Court Justice! Please re-read the last sentence of the above editorial: 'Any man who is prejudiced in favor of business, labor, labor racketeers, farming or gambling' (or, we add, any other specialized interest) 'has no business on the Nevada Supreme Court bench.'

()

A Reminder: Work for the Right
to work . . . Sign the Initiative Petition!

"Nevada

Citizens

Committee

True Representative of and by the People
(Insignia of a Hand holding a Torch)

Nevada Citizens Committee

Box 741

Las Vegas, Nevada

Nevada voters fortunately are blessed in that they have excellent choice among the many good opposing candidates running for public office. The Nevada Citizens Committee is unalterably *opposed* to any candidate whose record or back ground indicates bias against the general public interest."

Paid Political Adv.

XII.

That at the time of the publication of said false, defamatory, and libelous advertisement in the Las Vegas Review-Journal as aforesaid, and for many years prior thereto, as the Defendants, and each of them, then well knew, it had been the custom

and usage in the printing and publishing business in Clark County, Nevada, and generally throughout the State of Nevada and throughout the United States, in referring to a person disliked or held in contempt by the publisher, to print the name of such person in lower case letters without capitalizing the first letter of each given name and surname, in order to communicate to the public the publisher's dislike, discourtesy, contempt, and disrespect for such person.

XIII.

Plaintiff is informed and believes and therefore alleges the fact to be that Defendants, Nevada Citizens Committee, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually, and as Trustees of Defendant, Nevada Citizens Committee, and Defendant, J. R. Henderson, individually, and as Chairman of said corporate Defendant, wilfully, wickedly, and maliciously conspiring, confederating, and acting together in concert to defame the Plaintiff, acting by and through the said Wilson Baden, their duly authorized agent, and knowing full well of said custom and usage, caused the aforesaid libelous advertisement to be submitted to Defendants, A. E. Cahlan, John F. Cahlan, and Southwestern Publishing Co., Inc., a Nevada corporation, for publication in the Las Vegas Review-Journal, with instructions that the Plaintiff's name as printed in said advertisement was to be, and it was in fact, printed entirely in lower case letters. That said Defendants

thereby intended to evidence and represent to the public and did, in fact, evidence and represent to the public the malice, hatred, scorn, contempt, and disrespect of said Defendants, and each of them, towards the Plaintiff. That Defendants A. E. Cahlan, John F. Cahlan, and Southwestern Publishing Co., Inc., a Nevada corporation, wilfully, wickedly, and maliciously conspiring, confederating, and acting together in concert with each other and with the other Defendants named in this Paragraph XIII and with the said Wilson Baden, as agent of the aforesaid other Defendants, in order to defame the Plaintiff and knowing all the while full well of the existence of the aforesaid custom and usage, caused to be published, and published, the aforesaid libelous advertisement in the Sunday, November 5, 1950, issue of the Las Vegas Review-Journal in the aforesaid form whereby the Plaintiff's name was printed entirely in lower case letters. That said Defendants thereby intended to evidence, and represent to the public, and did, in fact, evidence and represent to the public, the malice, hatred, scorn, contempt, and disrespect of said Defendants, and each of them, towards the Plaintiff.

XIV.

That the aforesaid libelous advertisement, by reason of its contents and of the printing of the Plaintiff's name therein entirely in lower case letters, as aforesaid, was generally understood and taken by many persons in Clark County, Nevada, and elsewhere in the State of Nevada, including

many voters and many persons not associated with the printing and publishing business, to mean that in the opinion of said defendants, the sponsors and publishers of said advertisement, the Plaintiff was unworthy of common courtesy and respect but was to be held by the public in scorn, contempt and opprobrium.

XV.

That said publication was, in fact, false and defamatory in this, among other things, that the remark attributed to the Plaintiff in the editorial purportedly reprinted from the Lovelock Review-Miner, was subtly and designedly taken out of context and distorted in said editorial to give an entirely false impression of the Plaintiff's full statement and meaning in that the Plaintiff, in fact, informed the said Paul K. Gardner upon the occasion mentioned in said editorial that, although the Plaintiff had a personal sympathy for the workingman and, as a legislator, had had a long record of devotion to legislation commonly known as "labor legislation", as a Judge, he had never permitted any personal sympathy for the working man to influence his decisions, but that, on the contrary, he had always decided each case strictly according to the facts and to the applicable legal precedents. That said publication was, in fact, also false and defamatory in this, among other things, that contrary to the import, meaning and intendment of said publication, the Plaintiff had never, either upon said purported occasion or at any other time, admitted to a prejudice, nor was he, in fact, prejudiced, as

therein alleged, in favor of labor racketeers or any other special interest group. That, on the contrary, in all his years upon the Bench, as District Judge, Justice, and Chief Justice of the Supreme Court, in all cases coming before him, including the case involving the White Cross Drug Store mentioned in said publication, the Plaintiff made an honest and earnest endeavor to, and to the best of his knowledge and belief, did render his decisions without any bias, prejudice, or partiality for or against any person or group, but strictly in conformity with the facts of each case, the requirements of legal precedent, and the dictates of good conscience.

XVI.

That on the 5th day of November, 1950, the Plaintiff was a candidate for public office to succeed himself for an additional term of six years as a Justice of the Supreme Court of the State of Nevada. That by means of said false and defamatory publication the Defendants caused the Plaintiff to be defeated as a candidate for said office and to lose the emoluments of said office; that if, on the contrary, the Plaintiff had been elected, it was his fixed and firm intention to have continued to serve for the period of approximately five years and seven months of such six year term, at which time he would have become eligible for retirement, because of his having then served as a Judge and Justice, under the provisions of Section 4881.01, Nevada Compiled Laws, as amended, for the period of at least fifteen (15) years; that his salary of \$8,000.00 per year for such

five years and seven months would have amounted to \$44,666.66, and in which said sum of \$44,666.66 the Plaintiff has been damaged. That the Plaintiff would, at, on or about such time, have availed himself of his right and privilege to retire and would, upon the completion of such five years and seven months, and on or about August first, 1956, have resigned as such Justice, but before doing so would have taken proper steps before the appropriate officials to have been placed upon retirement status, and would have thereby, commencing on such August first, 1956, have had the right to receive, and would have at such time, commenced to receive the pension rights and privileges of said Section 4881.01, Nevada Compiled Laws, as amended, and that the Plaintiff by reason of the wrongful and malicious and wicked actions of the Defendants, in the premises, as hereinabove alleged, and based upon the Plaintiff's expectancy of life, will suffer, inevitably, further damages in the amount of \$18,284.39. That prior to ascending to the bench as a Justice of the Supreme Court of the State of Nevada, the Plaintiff had enjoyed a successful practice in his profession as an attorney at law and had earned in his profession as much as \$18,000.00 per year. That by means of said false and defamatory publication, the Defendants injured the Plaintiff in his reputation and good name as a lawyer, "as a jurist,"* and as a man of honor and integrity, and caused him such great humiliation and mental anguish and suffering that he became and remains crushed in body and spirit, and

his health was and is thereby and therefrom impaired, and he was and is disabled and incapacitated from pursuing his profession as an attorney at law, to his further damage in the sum of \$115,920.00. That in addition to having become disabled and incapacitated from pursuing his profession as an attorney at law by reason of great humiliation and mental anguish and suffering, as hereinabove alleged, Plaintiff has been further damaged by reason of such great humiliation and mental anguish and suffering in the sum of \$50,000.00. That by reason of the premises, the Plaintiff has been damaged in the sum of \$228,871.05 general damages.

* Stricken order of 12/11/52.

XVII.

That the Defendants, and each of them, and all of them, caused said defamatory language to be published, and did publish said defamatory language of and with reference to the Plaintiff, maliciously, wickedly, and vindictively and with hatred, evil design, and ill-will towards the Plaintiff, knowing or having reason to know all the while that the same was false and untrue, or, wantonly disregarding the rights of the Plaintiff and without making any effort to ascertain whether the same were true or false; and that by reason of such wilful, wanton, and malicious attack upon his character, reputation and good name as a lawyer, as a jurist, and as a man of honor and integrity, the Plaintiff has been damaged in the further sum of \$100,000.00 exemplary and punitive damages.

Wherefore, Plaintiff prays judgment against the Defendants, and each of them, in the sum of \$228,-871.05 general damages; in the further sum of \$100,000.00 punitive and exemplary damages, for his costs of suit herein, and for such other and further and appropriate relief as may be just and meet in the premises.

RALLI, RUDIAK & HORSEY,

/s/ By PAUL RALLI,

/s/ By GEORGE RUDIAK,

/s/ By D. FRANCIS HORSEY,

Attorneys for Plaintiff

/s/ CLYDE D. SOUTER, of Counsel

[Endorsed]: Filed July 22, 1952.

[Title of District Court and Cause.]

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Ralli, Rudiak & Horsey, plaintiff's attorneys, whose address is 200-203 Professional Bldg., 425 Fremont Street, Las Vegas, Nevada, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: July 22, 1952.

[Seal] /s/ AMOS P. DICKEY,
 Clerk of Court
 /s/ By O. F. PRATT,
 Deputy Clerk

Return of Service of Writs attached.

[Endorsed]: Filed August 5, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO SEPARATELY
STATE CAUSES OF ACTION

To: Ralli, Rudiak & Horsey, Esquires, and Clyde
D. Souter, Esquire, all attorneys for Plaintiff,
the address of Messrs. Ralli, Rudiak & Horsey
being 200-203 Professional Building, 425 Fre-
mont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, South-
western Publishing Co. Inc., a Nevada corporation,
A. E. Cahlan and John F. Cahlan, will severally
each for itself and himself, move the above entitled
court, at the court room thereof in the United
States Court and Post Office Building, City of Las
Vegas, County of Clark, State of Nevada, on the
29th day of September, 1952, at 10:00 o'clock in
the forenoon of that day, or as soon thereafter as
counsel can be heard for an order directing Plain-
tiff to serve an amended Complaint herein stating
in separate counts the claim asserted by Plaintiff

for alleged damage suffered as Attorney at Law arising out of the alleged statement in Plaintiff's Complaint and the claim asserted by Plaintiff for alleged damages suffered as Judge and public official arising out of the alleged claim set forth in Plaintiff's Complaint.

The motion is made upon the ground that said claims must necessarily be set forth in separate statements so that a clear presentation of the matter can be set forth in accordance with the Federal Rules of Civil Procedure.

In making the foregoing motion Defendants Southwestern Publishing Co. Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan, each for itself or himself, will rely upon the pleadings and files in the above entitled case.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR A MORE
DEFINITE STATEMENT

To: Ralli, Rudiak & Horsey, Esquires, and Clyde D. Souter, Esquire, all attorneys for Plaintiff, the address of Messrs. Ralli, Rudiak & Horsey being 200-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, Southwestern Publishing Company, Inc., a Nevada Corporation, A. E. Cahlan and John F. Cahlan, will, severally each for itself and himself, move the above entitled court, at the court room thereof in the United States Court and Post Office Building, City of Las Vegas, County of Clark, State of Nevada, on the 29th day of September, 1952, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard for an order directing Plaintiff to make a more definite statement of the purported causes of action set forth in Plaintiff's Complaint in this:

1. That Plaintiff be required to definitely plead as to whether or not he is seeking damages because of alleged *liable* allegedly published against him as a lawyer and/or allegedly published against him as a judge of the Supreme Court of the State of Nevada and a public officer.

In making the foregoing motion Defendants Southwestern Publishing Co. Inc., a Nevada Corporation, A. E. Cahlan and John F. Cahlan, each

for himself or itself, will rely upon the pleadings and files in the above entitled case.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Southwestern Publishing Co., Inc., a Nevada Corporation, A. E. Cahlan and John F. Cahlan.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE

To: Ralli, Rudiak & Horsey, Esquires, and Clyde D. Souter, Esquire, all attorneys for Plaintiff, the address of Messrs, Ralli, Rudiak & Horsey being 200-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan, will, severally each for itself and himself, move the above entitled court, at the court room thereof in the United States Court and Post Office Building, City of Las Vegas, County of Clark, State of Nevada, on the 29th day of September, 1952, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order striking from

Plaintiff's Complaint the following allegations on the ground that they are immaterial.

1. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that by", line 13, page 12, of Plaintiff's Complaint, down to and including the words "of Nevada", line 13, page 12 of Plaintiff's Complaint;

2. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that by," line 13, page 12, of Plaintiff's Complaint, down to and including the words "said office", line 15, page 12 of Plaintiff's Complaint;

3. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the word "that", line 15, page 12, of Plaintiff's Complaint, down to and including the words "been damaged", line 25, page 12, of Plaintiff's Complaint;

4. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that the Plaintiff", line 25, page 12, of Plaintiff's Complaint, down to and including the words and figures "of \$18,284.39", line 7, page 13, of Plaintiff's Complaint.

That said allegations are immaterial in that damages cannot be predicated upon failure of election to office as damages in such connection are necessarily too *remove* and speculative to justify consideration.

In making the foregoing motion Defendants

Southwestern Publishing Co. Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan, each for itself or himself, will rely upon the pleadings and files in the above entitled case.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Southwestern Publishing Co. Inc., a Nevada corporation; A. E. Cahlan and John F. Cahlan.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO SEPARATELY
STATE CAUSES OF ACTION

To: Ralli, Rudiak & Horsey, Esquires, and Clyde D. Souter, Esquire, all attorneys for Plaintiff, the address of Messrs. Ralli, Rudiak & Horsey being 200-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, South-

ern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, will, severally each for itself and himself, move the above entitled court, at the court room thereof in the United States Court and Post Office Building, City of Las Vegas, County of Clark, State of Nevada, on the 29th day of September, 1952, at 10:00 a.m. o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard for an order directing Plaintiff to serve an amended Complaint herein stating in separate counts the claim asserted by Plaintiff for alleged damage suffered as Attorney at Law arising out of the alleged statement in Plaintiff's Complaint and the claim asserted by Plaintiff for alleged damages suffered as Judge and public official arising out of the alleged claim set forth in Plaintiff's Complaint.

The motion is made upon the ground that said claims must necessarily be set forth in separate statements so that a clear presentation of the matter can be set forth in accordance with the Federal Rules of Civil Procedure.

In making the foregoing motion Defendants Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, each for himself or itself, will rely upon the pleadings and files in the above entitled case.

Gray and Horton, Ely National Bank
Building, Ely, Nevada, and Milton
W. Keefer, Suite 1, Cornet Build-
ing, Las Vegas, Nevada

/s/ By MILTON W. KEEFER,

Attorneys for Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR A MORE DEFINITE STATEMENT

To: Ralli, Rudiak & Horsey, Esquires, and Clyde D. Souther, Esquire, all attorneys for Plaintiff, the address of Messrs. Ralli, Rudiak & Horsey being 200-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, Nevada Citizens Committee Incorporated, Southern Nevada

Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, will, severally each for itself and himself, move the above entitled court, at the court room thereof in the United States Court and Post Office Building, City of Las Vegas, County of Clark, State of Nevada, on the 29th day of September, 1952, at 10:00 a.m. o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard for an order directing Plaintiff to make a more definite statement of the purported causes of action set forth in Plaintiff's Complaint in this:

1. That Plaintiff be required to definitely plead as to whether or not he is seeking damages because of alleged *liable* allegedly published against him as a lawyer and/or allegedly published against him as a judge of the Supreme Court of the State of Nevada and a public officer.

In making the foregoing motion Defendants Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, each for himself or

itself, will rely upon the pleadings and files in the above entitled case.

GRAY AND HORTON and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE

To: Ralli, Rudiak & Horsey, Esquires, and Clyde D. Souter, Esquire, all attorneys for Plaintiff, the address of Messrs. Ralli, Rudiak & Horsey being 200-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada. Sirs:

Please take notice that the undersigned, Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees

of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, will, severally each for itself and himself, move the above entitled court, at the court room thereof in the United States Court and Post Office Building, City of Las Vegas, County of Clark, State of Nevada, on the 29th day of September, 1952, at 10:00 a.m. o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard for an order striking from Plaintiff's Complaint the following allegations on the ground that they are immaterial:

1. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that on", line 10, page 12, of Plaintiff's Complaint, down to and including the words "of Nevada", line 13, page 12, of Plaintiff's Complaint;

2. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that by", line 13, page 12, of Plaintiff's Complaint, down to and including the words "said office", line 15, page 12, of Plaintiff's Complaint;

3. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the word "that", line 15, page 12, of Plaintiff's Complaint, down to and including the words "been damaged", line 25, page 12, of Plaintiff's Complaint;

4. Those certain allegations contained in Paragraph 16 of Plaintiff's Complaint beginning with the words "that the Plaintiff", line 25, page 12, of Plaintiff's Complaint, down to and including the

words and figures "of \$18,284.39", line 7, page 13, of Plaintiff's Complaint.

That said allegations are immaterial in that damages cannot be predicated upon failure of election to office as damages in such connection are necessarily too remote and speculative to justify consideration.

In making the foregoing motion Defendants Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, each for himself or itself, will rely upon the pleadings and files in the above entitled case.

GRAY AND HORTON and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

ANSWER

Comes Now the above named Defendants, Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually, and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson; jointly and severally; and answering Plaintiff's Complaint, individually and jointly, admit, deny and allege as follows:

I.

Answering Paragraph I of Plaintiff's Complaint, these Defendants admit all of the matters therein alleged except that portion thereof which states "that the Plaintiff is a citizen of the State of California" and as to said portion thereof, allege that Defendants are without sufficient knowledge or information to form a belief as to the truth of said allegation and upon that ground deny the same.

II.

Answering Paragraphs II, III and IV of Plaintiff's Complaint, Defendants allege that they are without sufficient knowledge or information to form a belief as to the truth of said allegations, and upon that ground deny the same.

III.

Answering Paragraph V of Plaintiff's Complaint, Defendants admit all the allegations therein contained. [and in conjunction therewith and as a further answer to said allegations, allege that the said corporation Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, is and was a non-profit corporation, and was so organized under the laws of the State of Nevada.] [Marginal Note: Stricken by order of 12/11/52.]

IV.

Answering Paragraph VI of Plaintiff's Complaint, Defendants admit all of the matters therein alleged saving and except that Defendants deny the allegations beginning with the words "and, as such", line 21, page 3, down to and including the words "Wilson Baden", line 26, page 3, and the whole thereof.

V.

Answering Paragraph VII of Plaintiff's Complaint, Defendants admit all of the matters therein alleged save and except that portion commencing with the words "and that" on line 8 of page 4 of said Complaint and continuing through line 10, concluding with the words "Paragraph VII" on page 4 of said Complaint, and as to that portion of said paragraph, the Defendants deny the same.

VI.

Answering Paragraph VIII of Plaintiff's Complaint, Defendants admit all of the matters therein

alleged except that portion thereof which reads “both a policy making and” and “and frequently influenced the policy making decisions of”, which said portion of said Complaint, Defendants deny.

VII.

Answering Paragraph IX of Plaintiff's Complaint, Defendants allege they are without sufficient knowledge or information to form a belief as to the truth of the allegations therein contained, and upon such ground deny the same.

VIII.

Answering Paragraph X of Plaintiff's Complaint, Defendants allege that they do not have sufficient knowledge or information to form a belief as to the truth of the allegations contained on page 5 of said Complaint beginning with the words “that on” on line 2 thereof, and continuing through the words “counsellor at law” on line 10 thereof; that Defendants admit the matters alleged in that portion of Paragraph X of Plaintiff's Complaint commencing with the words “That during” on line 10 thereof and concluding with the word “Nevada” on line 24 thereof; that Defendants deny that portion of Plaintiff's Complaint commencing on line 24 with the words “which office” on page 5 thereof and concluding with the words “until January 1, 1951” on line 26 thereof; and that the Defendants allege that they are without sufficient knowledge and information to form a belief as to the truth of the allegations contained in the remainder of said paragraph

commencing on line 26 thereof with the words "That in all" and concluding on line 31 thereof with the words "legal ability." and upon that ground deny the same.

IX.

Answering Paragraph XI of Plaintiff's Complaint, Defendants deny all of the matters alleged in said Paragraph save and except that portion thereof commencing on line 20 of page 6 of said Complaint with the words "submitted to the Defendant" and concluding on line 24 thereof with the words "Las Vegas Review Journal", and that portion of said paragraph commencing on line 2 of page 7 thereof with the words "did cause" and concluding on line 12 of page 9 of said Complaint with the words "paid political adv." and as to said portions of said paragraph, Defendants admit the matters therein alleged.

X.

Answering Paragraph XII of Plaintiff's Complaint, Defendants deny each and every allegation contained therein.

XI.

Answering Paragraph XIII of Plaintiff's Complaint, Defendants deny all of the allegations contained in said Paragraph save and except that the said Defendants admit that the publication referred to in Paragraph XI of Plaintiff's Complaint was published in the Sunday Edition of the Las Vegas Review Journal for November 5, 1950, and that Plaintiff's name was therein printed entirely in

lower case letters, and in this respect said Defendants deny the innuendo alleged relative to printing of Plaintiff's name in lower case letters.

XII.

Answering Paragraph XIV of Plaintiff's Complaint, Defendants deny all of the matters alleged therein.

XIII.

Answering Paragraph XV of Plaintiff's Complaint, Defendants deny all of the matters in said paragraph alleged down to and including line 31 of page 11 of said Complaint concluding with the words "special interest group"; and that with respect to the remainder of said paragraph, the Defendants are without sufficient knowledge or information to form a belief as to the truth of said allegations and thereupon deny the same.

XIV.

Answering Paragraph XVI of Plaintiff's Complaint, Defendants admit the matters alleged beginning on line 10 of page 12 thereof beginning with the words "That on" and concluding on line 13 thereof with the words "of Nevada"; that Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in that portion of said paragraph beginning with the words "That by means" on line 13 of page 12 thereof and concluding with the words "least 15 years" on line 22 thereof, and thereupon deny the same; that Defendants admit

that Plaintiff's salary of \$8,000.00 per year for five (5) years and seven (7) months would amount to \$44,666.66; but that Defendants specifically deny that Plaintiff has been damaged in the said sum of \$44,666.66 or any sum whatsoever; that Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph beginning with the words "That the Plaintiff" on line 25 of page 12 thereof and concluding with the words "laws as amended" on line 3 of page 13 thereof and upon that ground deny the same; that Defendants specifically deny the matter alleged in said paragraph commencing with the words "and that the Plaintiff" on line 3 of page 13 of said Complaint and concluding with the words "the amount of \$18,284.39" on line 7 page 13 thereof; and that Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph beginning with the words "That prior to" commencing on line 7 page 13 of said Complaint and concluding with the words and figures "\$228,871.05 general damages." on line 26 thereof, and thereupon deny the same; and Defendants specifically deny that Plaintiff has been damaged in the sum of \$115,920.00, the sum of \$50,000.00, and/or the sum of \$228,871.05 or any sum whatsoever.

XV.

Answering Paragraph XVII of Plaintiff's Complaint, Defendants deny all of the matters therein alleged.

As a Further and Separate Defense to Plaintiff's Complaint, Defendants allege as follows:

I.

That the Defendants have been informed and believe, and upon such information and belief allege that the statements purporting to be the statements of Plaintiff as made to the Editor of the Lovelock-Review Miner and contained in said publication published on November 5, 1950 in the Las Vegas Review Journal were statements made by the said Plaintiff, are and were true.

As a Further and Separate Defense, said Defendants allege as follows:

I.

That the editorial quoted from the Lovelock-Review Miner, a newspaper published in the Town of Lovelock, County of Pershing, and constituting part of the advertisement referred to in Plaintiff's Complaint as being published on November 5, 1950 in the Las Vegas Review Journal, was so published by the said Lovelock-Review Miner on the said 26th day of October, 1950; that the said editorial was acquired by and received by the said Defendants through generally recognized reliable sources of daily news, and was published by the Defendants for the information of the public and without any malice toward Plaintiff.

As a Further and Separate Defense to Plaintiff's Complaint, on file herein, Defendants allege as follows:

I.

That the said Plaintiff was a candidate for election to the office of Justice of the Supreme Court of the State of Nevada in the elections culminating on the 7th day of November, 1950; that the above named Defendants were associated together for the purpose of disseminating news and information to the general public relative to the qualifications of candidates for office; that in the capacity of disseminating news and information to the general public concerning the qualifications of candidates for public office the said Defendants obtained, through the usual course, a copy of the editorial published in the Lovelock-Review Miner on October 26, 1950, and that said Defendants believing the same to be true, so far as the facts therein stated and without malice toward the Plaintiff, caused the said editorial to be printed in the advertisement of November 5, 1950 in the Las Vegas Review Journal; said Defendants published the said advertisement upon the belief and under the conception that they were performing a public service in advocating the election to public office of men without bias or prejudice, and particularly men to the judiciary who were free from bias or prejudice toward any particular group; that the belief, intent and purpose of the said above named Defendants, and each of them, were set forth in the concluding paragraph of said advertisement, which reads as follows:

“Nevada voters fortunately are blessed in that they have excellent choice among the many good opposing candidates running for public office.

The Nevada Citizens Committee is unalterably opposed to any candidate whose record or background indicates bias against the general public interest.”

In so far as the words contained in said advertisement complained of by Plaintiff, consists of expressions of opinion, they are fair and impartial comments made in good faith and without malice upon the facts which are a matter of public interest, and were published in a public journal for the public benefit and are therefore privileged.

Wherefore, the above named Defendants respectfully pray that said Plaintiff's Complaint be dismissed, and that they go hence with costs.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, individually, and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed November 3, 1952.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Come Now the defendants Southwestern Publishing Co. Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan, and answering the Complaint on file herein, for themselves and themselves alone, admit, deny and allege as follows:

I.

Answering Paragraph I of said Complaint, defendants allege the fact to be that they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained commencing with the word "that", Line 281½, Page 1 and ending with the word "California", Line 281½, and upon that ground deny said allegations; defendants admit each and all the remaining allegations contained in said Paragraph I.

II.

Answering Paragraph II of said Complaint, defendants deny the words "the defamatory publication hereinafter mentioned", commencing on Line 11, Paragraph II, Page 2, and ending on Line 12, Paragraph II, Page 2; defendants admit each and all the remaining allegations contained in said Paragraph II.

III.

Answering Paragraph III of said Complaint, defendants admit each and all the allegations therein contained.

IV.

Answering Paragraph IV of said Complaint, defendants deny each and all the allegations therein contained commencing with the words "and that", Line 2, Page 3, Paragraph IV and ending with the words "libelous matter", Line 7, Paragraph IV, Page 3.

V.

Answering Paragraph V of said Complaint, defendants admit each and all the allegations contained therein.

VI.

Answering Paragraph VI of said Complaint, defendants allege they are without information or knowledge sufficient to form a belief as to the truth of the allegations therein contained, and upon that ground deny each and all the same.

VII.

Answering Paragraph VII of said Complaint, defendants allege they are without information or knowledge sufficient to form a belief as to the truth of the allegations therein contained, and upon that ground deny each and all the same.

VIII.

Answering Paragraph VIII of said Complaint, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and upon that ground deny each and all the same.

IX.

Answering Paragraph IX of said Complaint, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and upon that ground deny each and all the same.

X.

Answering Paragraph X of said Complaint, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained commencing with the words "That on", Line 2, Page 5, and ending with the words "at law", Line 10, Page 5, and upon that ground deny each and all the same; for further answer to said Paragraph X, defendants deny each and all the allegations therein contained commencing with the words "which office", Line 24, Page 5, and ending with the words "January 1, 1951", Line 26, Paragraph X, Page 5; for further answer to said Paragraph X, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained commencing with the words "that in," Line 26, Paragraph X, Page 5, and ending with the words "legal ability", Line 31½, Page 5, and upon that ground deny each and all of the same.

XI.

Answering Paragraph XI of said Complaint, defendants deny each and all the allegations therein contained commencing with the words "That on",

Line 2, and ending with the word "obloquy", Line 20, Paragraph XI, Page 6; for further answer to said Paragraph XI, defendants deny the allegations therein contained commencing with the word "wilfully, Line 26½, Page 6, and ending with the word "obloquy", Line 2, Paragraph XI, Page 7.

XII.

Answering Paragraph XII of said Complaint, defendants deny each and all the allegations therein contained.

XIII.

Answering Paragraph XIII of said Complaint, defendants deny each and all the allegations therein contained commencing with the letters "A. W.", Line 29, Paragraph XIII, Page 9, and ending with the word "plaintiff", Line 3, Paragraph XIII, Page 10; further answering said Paragraph XIII, defendants deny the allegations therein contained commencing with the word "and", Line 4, Paragraph XIII, Page 10, and ending with the word "libelous", Page 10, Paragraph XIII, Line 5; defendants further deny that portion of Paragraph XIII commencing with the words "that said", Line 11, Page 10, and ending with the word "plaintiff", Line 15; defendants further deny that portion of said Paragraph XIII commencing with the word "wilfully" Line 16, Paragraph XIII, Page 10, and ending with the word "usage", Line 22½, Paragraph XIII, Page 10, and deny the word "libelous," Line 23½, Paragraph XIII, Page 10; defendants further deny that portion of said Paragraph

XIII commencing with the words "that said", Line 261½, Paragraph XIII, Page 10, and ending with the word "plaintiff", Line 301½, Paragraph XIII, Page 10; defendants specifically deny the words "acting by and through the said Wilson Baden, their authorized agent", Lines 3 and 4, Paragraph XIII, Page 10, and "caused the", Line 5, Paragraph XIII, Page 10.

XIV.

Answering Paragraph XIV of said Complaint, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and upon that ground deny each and all the same.

XV.

Answering Paragraph XV of said Complaint, defendants deny each and all the allegations therein contained.

XVI.

Answering Paragraph XVI of said Complaint, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained commencing with the words "that by", Line 13, and ending with the word "years", Line 221½, Page 12, and upon that ground deny said allegations; for further answer to said Paragraph XVI, defendants allege they are without knowledge or information sufficient to form a belief as to the truth of the allega-

tions therein contained commencing with the words "that the", Line 25½, Page 12, and ending with the words "as amended", Line 3, Paragraph XVI, Page 13 and upon that ground deny each and all of said allegations; defendants upon said ground deny that portion of Paragraph XVI commencing with the words "that prior", Line 7, Paragraph XVI, Page 13, and ending with the words "general damages", Line 26, Paragraph XVI, Page 13; for further answer to said Paragraph XVI, defendants deny each and all the allegations therein contained commencing with the words "and in", Line 24½, Page 12, and ending with the word "damaged", Line 25½, Page 12; defendants further deny that portion of said Paragraph XVI commencing with the words "and that", Line 13, Paragraph XVI, Page 13, and ending with the figures \$18,-284.39", Line 7, Page 13; for further answer to said Paragraph XVI, defendants deny that plaintiff has been damaged in the sum of \$44,666.66 or any sum whatsoever for future wages as set forth in said Paragraph XVI and further deny that the plaintiff has been damaged in the sum of \$18,-284.39 or any sum whatsoever as set forth in Paragraph XVI, and further deny that plaintiff has been damaged in the sum of \$115,920.00 or any sum whatsoever; defendants further deny that the plaintiff has been damaged in the sum of \$50,000.00 or any sum whatsoever as set forth in Paragraph XVI of said Complaint and further deny that plaintiff has been damaged in the sum of \$228,871.05 or any sum whatsoever as set forth in said Paragraph

XVI; defendants specifically deny that plaintiff has been damaged in any of the amounts set forth in said Paragraph XVI or in any amount whatsoever as set forth in Paragraph XVI.

XVII.

Answering Paragraph XVII of said Complaint, defendants deny each and all the allegations contained in said Paragraph XVII and for further answer to said Paragraph XVII of said Complaint, defendants deny that plaintiff has been damaged in the sum of \$100,000.00 or any sum whatsoever as exemplary and/or punitive damages.

As a Further and Separate Defense to Said Plaintiff's Complaint, Defendants Allege As Follows:

I.

That the Defendants have been informed and believe, and upon such information and belief allege that the statements purporting to be the statements of plaintiff as made to the Editor of the Lovelock-Review Miner and contained in said publication published on November 5, 1950, in the Las Vegas Review Journal were statements made by the plaintiff, are and were true.

As a Further and Separate Defense, Defendants Allege As Follows:

I.

That the editorial quoted from the Lovelock-Review Miner, a newspaper published in the Town of

Lovelock, County of Pershing, and constituting part of the advertisement referred to in plaintiff's Complaint as being published on November 5, 1950 in the Las Vegas Review Journal, was so published by the said Lovelock-Review Miner, on the said 26th day of October, 1950; that the said editorial was acquired by and received by the said defendants through generally recognized reliable sources of daily news, and was published by the defendants for the information of the public and without any malice toward plaintiff.

As a Further and Separate Defense to Plaintiff's Complaint on File Herein, Defendants Allege as Follows:

I.

That the said plaintiff was a candidate for election to the office of Justice of the Supreme Court of the State of Nevada in the elections culminating on the 7th day of November, 1950; that the above named defendants were associated together for the purpose of disseminating news and information to the general public relative to the qualifications of candidates for office; that in the capacity of disseminating news and information to the general public concerning the qualifications of candidates for public office the said defendants obtained, through the usual course, a copy of the editorial published in the Lovelock-Review Miner on October 26, 1950, and that said defendants believ-

ing the same to be true, so far as the fact therein stated and without malice toward the plaintiff, caused the said editorial to be printed in the advertisement of November 5, 1950, in the Las Vegas Review Journal; said defendants published the said advertisement upon the belief and under the conception that they were performing a public service in advocating the election to public office of men without bias or prejudice, and particularly men to the judiciary who were free from bias or prejudice toward any particular group; that the belief, intent and purpose of the said above named defendants and each of them, were set forth in the concluding paragraph of said advertisement, which reads as follows:

“Nevada voters fortunately are blessed in that they have excellent choice among the many good opposing candidates running for public office. The Nevada Citizens Committee is unalterably opposed to any candidate whose record or background indicates bias against the general public interest.”

Insofar as the words contained in said advertisement complains of by plaintiff, consists of expressions of opinion, they are fair and impartial comments made in good faith and without malice upon the facts which are a matter of public interest, and were published in a public journal for the public benefit and are therefore privileged.

Wherefore, the above named defendants respect-

fully pray that said plaintiff's complaint be dismissed, and that they go hence with costs.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Defendants Southwestern Publishing Co., Inc., a Nevada Corporation; A. E. Cahlan and John F. Cahlan.

Acknowledgment of Service attached.

[Endorsed]: Filed November 3, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE FROM
ANSWER

To: Southwestern Publishing Co., Inc., a Nevada corporation; A. E. Cahlan and John F. Cahlan, defendants above named, and

To: Jones, Wiener & Jones, Esquires, their attorneys.

You and Each of You Will please Take Notice that on Friday, the 12th day of December, 1952, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, at the court room of the above entitled court, at the United States Court and Post Office Building, in the City of Las Vegas, County of Clark, State of Nevada, the above named plaintiff, Charles Lee Horsey, by and through his undersigned counsel, will move the Court for an order striking from the Answer of

said defendants to the plaintiff's Complaint, the following allegations, matters, and things, for the following reasons, and upon the following grounds, to-wit:

1. All of the purported further and separate defense set forth on page 6 of said Answer commencing on line 18 and ending on line 27; for the reason and upon the ground that said purported further and separate defense does not state facts sufficient to constitute the defense of truth, or any defense whatever to plaintiff's Complaint herein, and is irrelevant and immaterial.

2. All of the purported further and separate defense set forth on pages 6 and 7 of the Answer of said defendants commencing at line 28, page 6, and terminating at line 8 of page 7; for the reason and upon the ground that said purported further and separate defense does not state facts sufficient to constitute the defense of republication, or any defense whatever to the plaintiff's Complaint on file herein, and is irrelevant and immaterial.

3. All of the purported further and separate defense to plaintiff's Complaint commencing at line 9, page 7, and ending on line 12, page 8, of said Answer; for the reason and upon the ground that said purported defense does not state facts sufficient to constitute the defense of fair comment, or any defense whatever to the plaintiff's Complaint on file herein, and is irrelevant and immaterial.

In making the foregoing motions, the above

named plaintiff will rely upon all the pleadings and files in the above entitled action.

RALLI, RUDIAK & HORSEY

and CLYDE D. SOUTER

/s/ By GEORGE RUDIAK

Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed December 9, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE FROM
ANSWER

To: Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller, and Harry E. Claiborne, individually, and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation; and J. R. Henderson, defendants above named, and

To: Gray and Horton and Milton W. Keefer, Esquires, their attorneys.

You and Each of You Will Please Take Notice that on Friday, the 12th day of December, 1952, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, at the court room of the above entitled court, at the United States Court and Post Office Building, in the City

of Las Vegas, County of Clark, State of Nevada, the above named plaintiff, Charles Lee Horsey, by and through his undersigned counsel, will move the Court for an order striking from the Answer of said defendants to the plaintiff's Complaint, the following allegations, matters, and things, for the following reasons, and upon the following grounds, to-wit:

1. Those certain allegations contained in Paragraph III of said Answer, commencing with the words "and in conjunction" on line 12, page 2, and ending with the words "State of Nevada" on line 16, page 2; for the reason and upon the ground that said allegations are irrelevant and immaterial.

2. All of the purported further and separate defense set forth on page 6 of said Answer commencing on line 4 and ending on line 12; for the reason and upon the ground that said purported further and separate defense does not state facts sufficient to constitute the defense of truth, or any defense whatever to plaintiff's Complaint herein, and is irrelevant and immaterial.

3. All of the purported further and separate defense set forth on page 6 of the Answer of said defendants commencing at line 13 and ending on line 25; for the reason and upon the ground that said purported further and separate defense does not state facts sufficient to constitute the defense of republication, or any defense whatever to the plaintiff's Complaint on file herein, and is irrelevant and immaterial.

4. All of the purported further and separate de-

fense to plaintiff's Complaint set forth on pages 6 and 7 of said Answer, commencing on line 26, page 6, and terminating at line 28, page 7; for the reason and upon the ground that said purported defense does not state facts sufficient to constitute the defense of fair comment, or any defense whatever to the plaintiff's Complaint on file herein, and is irrelevant and immaterial.

In making the foregoing motions, the above named plaintiff will rely upon all the pleadings and files in the above entitled action.

RALLI, RUDIAK & HORSEY
and CLYDE D. SOUTER

/s/ By GEORGE RUDIAK

Attorneys for Plaintiff

Acknowledgment of Service attached.

[Endorsed]: Filed December 9, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO AMEND ANSWER

To: Charles Lee Horsey, Plaintiff, and to his counsel, Ralli, Rudiak & Horsey and Clyde D. Souter:

You and Each of You Will Please Take Notice that on Monday, the 15th day of December, 1952, at 10:00 a.m. of said day, or as soon thereafter as counsel can be heard, at the Courtroom of the above entitled court in the United States Court and Post Office Building in the City of Las Vegas, County

of Clark, State of Nevada, the above named Defendants, Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Southern Nevada Chapter, a Nevada corporation; and J. R. Henderson, by and through their counsel, W. Howard Gray and Milton W. Keefer, will move the Court for an order authorizing said Defendants to amend their Answer in the following particulars:

I.

That Paragraph IX of said Defendants' Answer be amended by changing the period at the end thereof to a semicolon, and by adding the following language:

and further answering said allegations contained in said Paragraph XI of Plaintiff's Complaint, said Defendants deny that the said paid advertisement was submitted for publication or that said paid advertisement was caused to be published by said Defendants or either or any of them.

II.

That said motion is based upon the grounds and for the reasons that certain facts have come to the attention of counsel for Defendants following the filing of the original Answer which materially changes the defenses of said Defendants, and that it is necessary for said Defendants to have their

answer so amended as to make available to them said newly discovered defense.

Dated This 10th day of December, 1952.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By W. HOWARD GRAY

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed December 10, 1952.

[Title of District Court and Cause.]

NOTICE OF MOTION TO AMEND ANSWER

To: Charles Lee Horsey, Plaintiff, and to his counsel, Ralli, Rudiak & Horsey and Clyde D. Souter:

You and Each of You Will Please Take Notice that on Monday, the 15th day of December, 1952, at 10:00 a.m. of said day, or as soon thereafter as counsel can be heard, at the Courtroom of the above entitled court in the United States Court and Post office Building in the City of Las Vegas, County of

Clark, State of Nevada, the above named Defendants, Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Southern Nevada Chapter, a Nevada corporation; and J. R. Henderson, by and through their counsel, W. Howard Gray and Milton W. Keefer, will move the Court for an order authorizing said Defendants to amend their Answer in the following particulars:

I.

That Paragraph IX of said Defendants' Answer be amended by changing the period at the end thereof to a semicolon, and by adding the following language:

and further answering said allegations contained in said Paragraph XI of Plaintiff's Complaint, said Defendants, other than the corporation defendant, deny that the said paid advertisement was submitted for publication or that said paid advertisement was caused to be published by said Defendants, other than the corporation defendant, or either or any of them.

II.

That said motion is based upon the grounds and for the reasons that certain facts have come to the attention of counsel for Defendants following the filing of the original Answer which materially changes the defenses of said Defendants, and that

it is necessary for said Defendants to have their answer so amended as to make available to them said newly discovered defense.

Dated this 12th day of December, 1952.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed December 12, 1952.

[Title of District Court and Cause.]

ORDER UPON PLAINTIFF'S MOTION TO
STRIKE FROM ANSWER

This matter having come before me for hearing in open Court on the 11th day of December, 1952, pursuant to Notice of Motion to Strike from Answer, filed and served by the Plaintiff herein, the Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Indi-

vidually and as Trustees of Nevada Citizens Committee, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, appearing by and through their counsel W. Howard Gray, Esq., and Milton W. Keefer, Esq., and Defendants Southwestern Publishing Co., Inc., a Nevada Corporation, A. E. Cahlan and John F. Cahlan appearing by and through their counsel Louis Wiener, Jr., Esq., and the Plaintiff appearing by and through his counsel George Rudiak and Francis D. Horsey, Esqs., and the Court being fully advised in the premises and good cause appearing therefor,

It Is Ordered, that the following allegations in Paragraph III of Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, Answer to Plaintiff's Complaint, to-wit: "and in conjunction therewith and as a further answer to said allegations, allege that the said corporation Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, is and was a non-profit corporation, and was so organized under the laws of the State of Nevada.", be, and the same are, hereby stricken from said Answer, as irrelevant and immaterial; and

It Is Ordered, that the remainder of said Motion to Strike be, and the same is, hereby denied, and those portions of said Answer subject to said mo-

tion be not stricken from the said Answer on file herein.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed January 5, 1953.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANTS' MOTION
TO STRIKE, MOTION FOR A MORE DEF-
INITE STATEMENT, AND MOTION TO
SEPARATELY STATE CAUSES OF AC-
TION

This matter having come before me for hearing in open Court on the 11th day of December, 1952, pursuant to Notice of Motion to Strike, Notice of Motion for a More Definite Statement, and Notice of Motion to Separately State Causes of Action, filed and served by the Defendants herein, said Defendants, Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, appearing by and through their counsel Howard Gray, Esq. and Milton W. Keefer, Esq., and Defendants Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and John F. Cahlan appearing by and through

their counsel Louis Wiener, Jr., Esq., and the Plaintiff appearing by and through his counsel George Rudiak and Francis D. Horsey, Esqs., and the Court being fully advised in the premises and good cause appearing therefor,

It Is Ordered that said Motion to Strike, Motion for a More Definite Statement and Motion to Separately State Causes of Action, be, and the same are hereby denied.

/s/ ROGER T. FOLEY
District Judge.

[Endorsed]: Filed January 5, 1953.

[Title of District Court and Cause.]

STIPULATION ON PLAINTIFF'S MOTION TO STRIKE PORTION OF COMPLAINT

It is hereby stipulated and agreed by and between the Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, by and through their counsel W. Howard Gray, Esq., and Milton W. Keefer, Esq., and the Plaintiff Charles Lee Horsey, by and through his counsel, Ralli, Rudiak & Horsey, Esqs., as follows:

That upon the hearing before this court on the

11th day of December, 1952, Plaintiff, in open court, moved that the words "as a jurist" on line 13, page 13 of Plaintiff's Complaint be stricken therefrom; that the said motion was granted without objection, and it is therefore hereby stipulated and agreed that the words hereinabove set forth be stricken from Paragraph XVI, line 13, page 13, of said Complaint.

Dated this 9th day of January, 1953.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, a Nevada Corporation; and J. R. Henderson.

RALLI, RUDIAK & HORSEY

/s/ By D. FRANCIS HORSEY

Attorneys for Plaintiff.

Approved: January 10, 1953.

/s/ ROGER T. FOLEY,
U. S. District Judge.

[Endorsed]: Filed January 10, 1953.

[Title of District Court and Cause.]

STIPULATION REGARDING DEFENDANTS' MOTION TO AMEND ANSWER

It is hereby stipulated and agreed by and between the Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson, by and through their counsel W. Howard Gray, Esq., and Milton W. Keefer, Esq., and the Plaintiff Charles Lee Horsey, by and through his counsel, Ralli, Rudiak & Horsey, Esqs., as follows:

That upon the hearing before this Court on the 11th day of December, 1952, pursuant to Notice of Motion to Amend Answer, filed and served by the Defendants hereinabove named, the said Motion was granted without objection, and it is therefore hereby stipulated and agreed that Paragraph IX of said Defendants' Answer be, and the same hereby is, amended by changing the period at the end thereof to a semicolon, and by adding the following language thereto:

and further answering said allegations contained in said Paragraph XI of Plaintiff's Complaint, said Defendants, other than the corporation defendant, deny that the said paid advertisement was submitted for publication or

that said paid advertisement was caused to be published by said Defendants, other than the corporation defendant, or either or any of them.

That this stipulated amendment to Defendants' Answer shall not disturb or in any manner affect the trial setting heretofore made by the Honorable Roger T. Foley, District Judge in this case.

Dated this 9th day of January, 1953.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

RALLI, RUDIAK & HORSEY

/s/ By D. FRANCIS HORSEY

Attorneys for Plaintiff.

Approved: January 10, 1953.

/s/ ROGER T. FOLEY,

U. S. District Judge.

[Endorsed]: Filed January 10, 1953.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

Plaintiff, Charles Lee Horsey, requests the defendants Southwestern Publishing Co., Inc., A. E. Cahlan, and John F. Cahlan, severally, within ten (10) days after service of this request, to make the following Admissions for the purpose of this action only, and subject to all pertinent objections to admissibility which may be interposed at time of trial:

I.

That the following advertisement exhibited with this request is genuine:

A true copy of a political advertisement concerning the candidacy of plaintiff, Charles Lee Horsey, for Justice of the Supreme Court of the State of Nevada, as published in the November 5th, 1950, Edition of the Las Vegas Review Journal.

II.

That each of the following statements is true:

(a) That the political advertisement referred to in the foregoing Request for Admission of genuineness of document was published in the Las Vegas Review Journal, November 5, 1950 Edition.

(b) That on November 5, 1950, and for some months prior thereto, the defendant Southwestern Publishing Co., Inc., was the owner, proprietor, and

publisher of the newspaper known as the Las Vegas Review Journal.

(c) That the defendant A. E. Cahlan was on November 5, 1950, and for some months prior thereto, a member of the Board of Directors of the defendant Southwestern Publishing Co., Inc., and also the Managing Director of the Las Vegas Review Journal.

(d) That the defendant John F. Cahlan was on November 5, 1950, and for some months prior thereto, Editor of the Las Vegas Review Journal.

(e) That on November 5, 1950, the plaintiff, Charles Lee Horsey, was Chief Justice of the Supreme Court of the State of Nevada.

(f) That the advertisement, a copy of which is attached hereto, and which is referred to in the above Request for Admission of genuineness of document, was printed and published in all copies of the Las Vegas Review Journal, November 5, 1950 Edition, as a paid advertisement.

(g) That the document, a copy of which is attached hereto, and which is referred to in the above Request for Admission of genuineness of document was submitted to the Las Vegas Review Journal for publication by a representative of the defendant Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation.

(h) That the annual salary of the office of Jus-

tice of the Supreme Court of the State of Nevada was \$8,000.00 during the years 1950 and 1951.

RALLI, RUDIAK & HORSEY
and CLYDE D. SOUTER

/s/ By D. FRANCIS HORSEY
Attorneys for Plaintiff.

[Printer's Note: Copy of advertisement attached is the same as set out at pages 10-13 of this printed record.]

Acknowledgment of Service attached.

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

The plaintiff, Charles Lee Horsey, requests the defendants Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller, Harry E. Claiborne, and J. R. Henderson, severally, within ten (10) days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at time of trial:

I.

That the following advertisement exhibited with this request is genuine:

A true copy of a political advertisement concern-

ing the candidacy of plaintiff, Charles Lee Horsey, for Justice of the Supreme Court of the State of Nevada, as published in the November 5th, 1950, Edition of the Las Vegas Review Journal.

II.

That each of the following statements is true:

(a) That the political advertisement referred to in the foregoing Request for Admission of genuineness of document was published in the Las Vegas Review Journal, November 5, 1950 Edition.

(b) That on November 5, 1950, the plaintiff, Charles Lee Horsey, was Chief Justice of the Supreme Court of the State of Nevada.

(c) That the advertisement, a copy of which is attached hereto, and which is referred to in the above Request for Admission of genuineness of document, was printed and published in all copies of the Las Vegas Review Journal, November 5, 1950 Edition, as a paid advertisement.

(d) That the document, a copy of which is attached hereto, and which is referred to in the above Request for Admission of genuineness of document was submitted to the Las Vegas Review Journal for publication by a representative of the defendant Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation.

(e) That the annual salary of the office of Justice of the Supreme Court of the State of Nevada was \$8,000.00 during the years 1950 and 1951.

(f) That the Las Vegas Review Journal was on November 5, 1950, and for some months prior thereto, a newspaper published in Clark County, Nevada, and was circulated in Clark County, Nevada, as well as in other portions of the State of Nevada.

(g) That one of the purposes of the Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, was to influence the electorate of Southern Nevada to vote for certain candidates for public office and to vote against certain other candidates for public office.

(h) That one of the purposes of the advertisement, a copy of which is attached hereto and which is above referred to in the Request for Admission of genuineness of document, was to influence the voters of Southern Nevada to vote against the plaintiff, Charles Lee Horsey, with respect to his candidacy for Justice of the Supreme Court of the State of Nevada in the election of November 7, 1950.

RALLI, RUDIAK & HORSEY and
CLYDE D. SOUTER

/s/ By D. FRANCIS HORSEY,
Attorneys for Plaintiff.

[Printer's Note: Copy of advertisement attached is the same as set out at pages 10-13 of this printed record.]

Acknowledgment of Service attached.

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO REQUEST FOR ADMISSIONS

Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller, Harry E. Claiborne and J. R. Henderson object to that portion of the matter set forth in statement II (f) of Plaintiff's request for admission of facts, served upon them on January 16, 1954, wherein it is stated that the Las Vegas Review Journal was on November 5, 1950, circulated in portions of the State of Nevada other than Clark County, Nevada, upon the grounds that they cannot truthfully admit or deny the said statement because they have no actual, direct or competent knowledge of the truthfulness of the facts contained therein.

The said defendants object to paragraph II (g) of said request for admission on the grounds (1) that the same refers to immaterial and irrelevant matters in that the purposes of the Nevada Citizens Committee, Incorporated, Southern Nevada Chapter is irrelevant and immaterial and no evidence thereof would be properly receivable in evidence upon the trial of this action and that the purposes of the Nevada Citizens Committee, Incorporated is outside the issues raised by the pleadings herein; and (2) that the said statement is ambiguous in that the terms "certain candidates" and

“certain other candidates” are without meaning insofar as the issues in this case are concerned, and (3) the statement is too general and ambiguous to be subjected to the requirement of an admission or denial.

W. HOWARD GRAY &
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

To: Ralli, Rudiak & Horsey and Clyde D. Souter, Attorneys for Plaintiff, 201-203 Professional Building, 425 Fremont Street, Las Vegas, Nevada.

NOTICE OF HEARING

Please take notice that the undersigned will bring the foregoing Objections to Request for Admission on for hearing before this Court on the 5th day of February, 1954, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, in the Court room of this Court in the courthouse at Las Vegas, Clark County, Nevada.

Dated: January 26, 1954.

W. HOWARD GRAY &
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed January 26, 1954.

[Title of District Court and Cause.]

RESPONSE TO REQUEST FOR ADMISSIONS

Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada corporation, A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller, Harry E. Claiborne and J. R. Henderson hereby waive their Objections to Request for Admissions heretofore filed herein and respond to said Request for Admissions as follows:

1. Statements numbered II (a), (b), (c), (d), (e) and (h) are admitted.
2. Referring to statement numbered II (f), De-

fendants admit that at the time and during the period stated the Las Vegas Review-Journal was a newspaper published in Clark County, Nevada, and was circulated principally in Clark County, Nevada, with a small circulation outside said county.

3. Referring to statement numbered II (g), Defendants deny said statement. Defendants do, however, admit that one of the activities of the Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, for a period prior to the 1950 general election, was to attempt to influence the electorate of Southern Nevada to vote against candidates for public office believed to be opposed to the principles espoused by said corporation.

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER

Attorneys for Defendants Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; A. W. Blackman, Vern Willis, Frank M. Bollig, Abe Miller and Harry E. Claiborne, Individually and as Trustees of Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a Nevada Corporation; and J. R. Henderson.

Acknowledgment of Service attached.

[Endorsed]: Filed February 1, 1954.

[Title of District Court and Cause.]

VERDICT

We, the jury in the above entitled case, find in favor of the plaintiff and against the defendants in the amount of \$10,000.00 as compensatory damages, and \$15,000.00 as punitive damages.

Dated: This 28th day of September, 1954.

/s/ BARBARA HALL,
Foreman.

[Endorsed]: Filed September 28, 1954.

[Title of District Court and Cause.]

INSTRUCTIONS TO THE JURY

Instruction No. 1

There are certain general principles of law to which the Court desires to call your attention.

You will understand that under our system the Court and the jury have a divided responsibility. It is the duty of the Court to decide all questions of law which may arise during the progress of the trial, and the duty of the jury to pass upon the facts. If the Court is unfortunate enough to make a mistake in deciding those questions of law, there is another court which may be appealed to, to correct those mistakes. It is, therefore, the duty of the jury to take the law as laid down by the Court, because if the jury should undertake to determine what the

law is, and should make a mistake, there is no way of remedying it. It is the province of the jury to pass upon the facts of the case, upon the credibility of the witnesses, and to apply the law to the facts of the case as they find the facts to be. The Court is just a little inclined to interfere with the province of the jury passing upon the facts of the case, as it is sensitive about having the jury undertake to determine what is the law of the case. With this understanding of our respective duties, the Court states to you the following general principles.

Given: Roger T. Foley, Judge.

Instruction No. 2

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others.

Given: Roger T. Foley, Judge.

Instruction No. 3

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such ruling and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting

evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness.

Given: Roger T. Foley, Judge.

Instruction No. 4

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against any party to the action.

Given: Roger T. Foley, Judge.

Instruction No. 5

In civil actions, and this is a civil case, the party who asserts the affirmative of an issue must carry the burden of proving it. In other words the "burden of proof" as to that issue is on that party. This means that if no credible evidence were given on either side of such issue, your finding as to it would have to be against the party asserting it. When the evidence is contradictory, the decision must be made according to the preponderance of evidence, by which is meant such evidence, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability of truth lies therein. Should the conflicting evidence on either side of the issue be evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

Given: Roger T. Foley, Judge.

Instruction No. 6

You are instructed that the defendants have admitted and you are to take as true that at the time of the publication of the advertisement in evidence herein as Plaintiff's Exhibit 3, the defendant Southwestern Publishing Company was a corporation and the owner and publisher of the newspaper known as the Las Vegas Review-Journal, which was widely circulated in Clark County, Nevada, and other counties of the State of Nevada and elsewhere, and at the time of the publication of the advertisement claimed to be libelous had a daily circulation of approximately 14,000 copies.

The defendant A. E. Cahlan was Managing Director of the defendant Southwestern Publishing Company and as such Managing Director had active control over the management and policy of the Las Vegas Review-Journal and the activities of its employees, and that it was his duty and responsibility to edit all printed matter published in the newspaper and to ascertain the truth of such matter in advance of publication and exclude from publication all untruthful and libelous matters. His absence or lack of knowledge of such publication would not relieve him from such responsibilities.

Defendant Nevada Citizens Committee Incorporated, Southern Nevada Chapter, was a corporation incorporated under the laws of the State of Nevada.

That during many years of residence in the State of Nevada, the plaintiff held numerous public offices of honor, confidence and trust; that is, as District Attorney of Lincoln County, Nevada, from

1906 to 1909, as State Senator from Lincoln County, Nevada, from 1913 to 1914; as District Judge of the Tenth Judicial District Court in and for the Counties of Lincoln and Clark, from 1915 to 1919; as State Senator from Clark County, 1939 to 1940; as District Judge of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, from 1915 to 1919; as State Senator from Clark County, 1939 to 1940; as District Judge of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, June to October, 1945; as Justice of the Supreme Court of the State of Nevada, commencing October, 1945, and culminating with the office of Chief Justice of the Supreme Court of the State of Nevada, until January 1, 1951; and that plaintiff has served a total of 9 years, 8 months, on the Bench of the District Court and of the Supreme Court of the State of Nevada.

That defendant Nevada Citizens Committee submitted to defendant Southwestern Publishing Company, Inc., for publication in the Las Vegas Review-Journal as a paid advertisement the advertisement in evidence in plaintiff's Exhibit 3, and that defendant Southwestern Publishing Company, Inc. and defendant A. E. Cahlan published the same in the Sunday, November 5, 1950, issue of the Las Vegas Review-Journal.

That the plaintiff's name was printed entirely in lower case letters in the advertisement.

That the advertisement filed as Plaintiff's Exhibit 3 was published in all copies of the Sunday,

November 5, 1950, edition of the Las Vegas Review-Journal.

That the advertisement in evidence as Plaintiff's Exhibit 3 was paid for by the defendant Nevada Citizens Committee.

That defendant A. E. Cahlan was at the time of publication of the advertisement, a member of the Nevada Citizens Committee Incorporated, Southern Nevada Chapter.

That one of the activities of defendant Nevada Citizens Committee for a period prior to the 1950 General Election, was to attempt to influence the electorate of Southern Nevada to vote against candidates for public office believed to be opposed to the principles espoused by said corporation.

Given: Roger T. Foley, Judge.

Instruction No. 7

The alleged defamatory matter is before you here as Exhibit 3 admitted in evidence. If you find that the language contained therein, or any portion thereof, either by the common use made of the language within Clark County, Nevada, or by the acceptance of the terms or assertions contained in said exhibit, imputed attributes to the plaintiff which would naturally tend to degrade him in the estimation of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business, occupation or profession, you should find that the plaintiff is entitled to your verdict for actual damages; and in addition, if you should further find that a defendant or defendants, in mak-

ing such publication, was or were actuated by a feeling of spite, or ill will or disposition to injure, you may, under such circumstances, grant to the plaintiff punitive damages. However, if you further find from the evidence that the defendants were not actuated by express malice and you further find that the language contained in Exhibit 3 was privileged matter or constituted fair comment, then the plaintiff will not be entitled to recover against any of the defendants and your verdict should be for the defendants.

Given: Roger T. Foley, Judge. .

Instruction No. 8

While in a legal sense the malice requisite to constitute libel is implied in the publication of untrue defamatory matter, and further proof thereof, so far as concerns the question of actual damages, is not required, not so when we come to consider the propriety of imposing a penalty or inflicting punitive damages. You cannot award exemplary or punitive damages except for actual malice, or, as is sometimes said, express malice. To constitute such malice the defendants whom you have under consideration must have been actuated by a feeling of spite, or ill will, or disposition to injure, or the wrongful action must have been so grossly negligent, so wanton, as to import a willingness on the part of the wrongdoer to injure others—a recklessness of the rights of others implying a wilful disregard of them.

Given: Roger T. Foley, Judge.

Instruction No. 9

In regard to the question of privilege or fair comment, you are instructed that the mere fact that a man is a public officer, or is a candidate for public office, does not constitute a warrant, either to the ordinary citizen or to a newspaper, to spread false charges against him of criminal acts or disgraceful conduct. In a sense, in becoming a candidate, a man invites close scrutiny and opens his life to the light of publicity. Within the range of good faith a newspaper or a citizen may properly disclose to the public and advise the electorate of the state of his every act and utterance, and criticize and comment thereon, even with severity and suggest any reasonable inference or implication therefrom bearing upon the fitness or qualification faithfully or efficiently to discharge his duties as a public officer, or his qualifications for the office which he seeks. But the distinction must be drawn between comment and criticism, and untrue charges of facts constituting a crime or disgraceful conduct. It is one thing to pass severe criticism upon, or to draw even extreme inferences from, acknowledged facts, or to indulge in intemperate denunciation, even though bitter, and quite another thing to assert the existence of particular acts of criminality or of shameful misconduct upon the candidate's part. Neither the newspaper nor the citizen may with impunity falsely charge the candidate or the public officer with specific acts of criminality or shameful misconduct, either in the form of an

advertisement or matter copied from another newspaper.

Given: Roger T. Foley, Judge.

Instruction No. 10

Exhibit 3 should be considered by you as a whole and must be read and construed in the sense in which the readers to whom it was addressed would ordinarily understand it. In determining whether the publication of Exhibit 3 was actuated by a feeling of spite or ill will or disposition to injure, you are entitled to consider all the facts and circumstances here in evidence and such inferences as may be fairly made from the matters before you.

Given: Roger T. Foley, Judge.

Instruction No. 11

If you find from the evidence that the plaintiff is entitled to recover in this action, it will then be your duty to assess the amount of damages which in your judgment he should recover. You then may take into consideration the extent of the circulation given to the article published in defendants' newspaper, the rank, standing and position of the plaintiff in his profession, the injury, if any, you find to his fame and reputation, the grief, anguish, mental suffering, mortification and humiliation which the plaintiff has undergone and suffered by reason of the article, if you believe from the evidence that his fame and reputation were injured and that he did suffer grief, anguish, mental suffering, mortification or humiliation. You should as-

sess his damages in such an amount as in your judgment would compensate him for the injury sustained as the proximate result of the publication.

However, only such damages should be awarded as are the direct and proximate result of the libel, and remote or speculative damages are not to be considered.

Given: Roger T. Foley, Judge.

Instruction No. 12

You are instructed that there are two classes of damages in actions for libel, namely, compensatory damages and exemplary or punitive damages.

By compensatory damages is meant actual damages or such damages as will compensate a person for injury he may have actually sustained by reason of a libel.

Exemplary damages are such damages as the law says may be given in certain cases in addition to actual damages for the sake of example and by way of punishing a defendant.

Given: Roger T. Foley, Judge.

Instruction No. 13

One whose election to office is alleged to have been defeated by the publication of a libel cannot recover damages resulting from the loss of an election. Damages based upon the loss of an election are too speculative and uncertain to be considered by the jury.

Given: Roger T. Foley, Judge.

Instruction No. 14

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your minds, as against the declarations of a lesser number or a presumption or other evidence, which appeals to your minds with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of a greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony even if a number of witnesses have testified to the contrary, if from the whole case, considering the credibility of witnesses and after weighing the various factors of evidence, you should believe that there is a balance of probability pointing to the accuracy and honesty of the one witness.

Given: Roger T. Foley, Judge.

Instruction No. 15

In judging the credibility of witnesses you shall have in mind the law that a witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence, by the man-

ner in which the witness testifies, by the character of his testimony, or by evidence that pertains to his motives.

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, you may reject the whole testimony of a witness who wilfully has testified falsely as to a material point, unless, from all the evidence, you shall believe that the probability of truth favors his or her testimony in other particulars.

Discrepancy in a witness' testimony or between his testimony and that of others, if there were any, does not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance. But a wilful falsehood always is a matter of importance and should be seriously considered.

Given: Roger T. Foley, Judge.

Instruction No. 16

It is your duty as jurors to consult with one another and to deliberate, with a view to reaching an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion

when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Given: Roger T. Foley, Judge.

Instruction No. 17

It takes twelve to find a verdict. The Clerk, as a matter of convenience, has prepared forms of verdict which will be handed to you.

In the event that you find for the plaintiff and against the defendants, you may return a verdict as follows: "We, the jury in the above entitled case, find in favor of the plaintiff and against the defendants in the amount of \$. as compensatory damages."

Also, in the event you find for the plaintiff and further find that the alleged libel was actuated by express malice, you will ignore the above form of verdict and your verdict may be as follows: "We, the jury in the above entitled case, find in favor of the plaintiff and against the defendants in the amount of \$. as compensatory damages, and \$. as punitive damages."

If you find in favor of the defendants, your verdict may be as follows: "We, the jury in the above

entitled case, find against the plaintiff and in favor of the defendants.”

When you retire to the jury room to deliberate you will select one of your number as foreman and he or she will sign your verdict for you. You will then return into court with the verdict. Your foreman will represent you as your spokesman in the further conduct of this case in the court.

Given:

/s/ ROGER T. FOLEY,
United States District Judge

[Endorsed]: Filed September 28, 1954.

[Title of District Court and Cause.]

COPY OF CIVIL DOCKET ENTRY OF
SEPTEMBER 28, 1954

September 28, 1954—Entg. Judgment: Judgment: Judgment is hereby entered in favor of the plaintiff and against the defendants in the amount of \$10,000.00 as compensatory damages, and \$15,000.00 as punitive damages.

September 29, 1954. Counsel notified of above entry of judgment.

A true copy from the records.

Attest:

[Seal]

AMOS P. DICKEY,
Clerk.

/s/ By RAY MONA SMITH,
Deputy.

[Title of District Court and Cause.]

BILL OF COSTS

Judgment having been entered in the above entitled action on the 28th day of September, 1954, against the defendants, the clerk is requested to tax the following as costs:

Bill of Costs

Fees of the clerk: \$15.80.

Fees of the marshal: \$21.00.

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case: \$62.10.

Fees for witnesses (itemized on reverse side): \$8.50.

Fees for exemplification and copies of papers necessarily obtained for use in case: \$34.82.

Docket fees under 28 U.S.C. 1923: \$42.50.

Costs incident to taking of depositions: \$434.30.

Total: \$619.02.

State of Nevada,
County of Clark—ss.

I, George Rudiak, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to Jones, Wiener & Jones, Esq., and Milton

W. Keefer, Esqs., with postage fully prepaid thereon.

/s/ GEORGE RUDIAK,
One of Attorneys of Charles Lee
Horsey, Plaintiff

Subscribed and sworn to before me this 1st day of October, A.D. 1954, at Las Vegas, Clark County, Nevada.

[Seal] /s/ MILDRED H. LEAVITT,
Notary Public in and for said
County and State

Costs are hereby taxed in the amount of \$619.02 this 4th day of October, 1954, and that amount included in the judgment.

/s/ AMOS P. DICKEY, Clerk
/s/ By O. F. PRATT, Deputy Clerk

(Reverse side)

Witness Fees: J. R. Henderson, attendance cost, \$4.00; mileage, \$.25; total: \$4.25. William V. Wright, attendance cost, \$4.00; mileage, \$.25; total, \$4.25. Total, \$8.50.

[Endorsed]: Filed October 1, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants herein, Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, move the Court for an order setting aside the verdict and the judgment and granting a new trial upon the following grounds:

1. That the damages awarded by the verdict are grossly excessive.

2. That the damages awarded by the verdict are contrary to law.

3. That the verdict is contrary to law.

4. That the verdict is contrary to the evidence.

5. That the verdict is contrary to the law and the evidence.

6. That the verdict is excessive and appears to have been given under the influence of passion and prejudice.

7. That the Court erred in admitting irrelevant, incompetent and prejudicial testimony offered by the plaintiff over defendants' objection as follows: The election returns for Clark County for 1946 and 1950, showing the number of votes cast in each of said elections for the office of Justice of the Supreme Court.

8. That there is no sufficient or substantial evi-

dence tending to support the amount of the jury's verdict.

Dated at Las Vegas, Nevada, this 8th day of October, 1954.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Defendants Southwestern Publishing Co., Inc., a Nevada corporation, and A. E. Cahlan, 230 South Fifth Street, Las Vegas, Nevada, and

W. HOWARD GRAY and
MILTON W. KEEFER

/s/ By MILTON W. KEEFER,

Attorneys for Nevada Citizens Committee Incorporated, Southern Nevada Chapter, Suite 1, Cornet Building, Las Vegas, Nevada.

Acknowledgment of Service attached.

[Endorsed]: Filed October 8, 1954.

[Title of District Court and Cause.]

BOND

Know All Men by These Presents:

That we, Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, as principal, and

Royal Indemnity Company, a corporation organized under the laws of the State of New York, engaged and authorized to engage in, the business of acting as Surety on judicial and other bonds in the State of Nevada, as surety, are held and firmly bound unto the State of Nevada, in the sum of Fifty five thousand (\$55,000.00) Dollars, to be paid to Charles Lee Horsey, his attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated October 12, 1954.

Whereas, lately in a suit pending in the United States District Court for the District of Nevada, between the above named plaintiff and defendants, a judgment was rendered against said defendants and said defendants having filed a notice of appeal to reverse the judgment on appeal to the United States Court of Appeals for the Ninth Circuit.

Now the condition of this obligation is such that if said defendants shall satisfy the judgment in full, together with costs, interest and damages for delay, if the appeal is dismissed or if the judgment is affirmed, or if defendants shall satisfy any modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, then the above obligation to be void; else to remain in full force and effect.

In Witness Whereof, said Principal and Surety

have hereunto set their hands and seals this 12th day of October, 1954.

SOUTHWESTERN PUBLISHING
CO., INC.

/s/ By A. E. CAHLAN, Vice-President.

/s/ A. E. CAHLAN,

NEVADA CITIZENS COMMITTEE
INCORPORATED, SOUTHERN
NEVADA CHAPTER

/s/ By JACK L. YOUNG, Principal.

ROYAL INDEMNITY COMPANY

/s/ By [Illegible], Surety.

Acknowledgment of Service attached.

[Endorsed]: Filed October 13, 1954.

[Title of District Court and Cause.]

COURT MINUTE ORDER, DEC. 29, 1954

This being the time heretofore fixed for hearing on Defendant's Motion to Retax Costs and Motion for New Trial, and the same coming on regularly this day. Messrs. Frances D. Horsey and Samuel S. Lionel, of the firm of Ralli, Rudiak and Horsey, appear for and on behalf of the Plaintiff. Louis Wiener, Jr., Esq., of the firm of Jones, Wiener and Jones appears for and on behalf of the defendant Southwestern Publishing Company, Inc., Milton W. Keefer, Esq. appears for the defendant Nevada Citizens Committee, Inc. Upon Motion of Mr. Wie-

ner, It Is Ordered that the Motion to Retax Costs be, and the same hereby is, withdrawn. The Motion for New Trial now comes on for hearing. Following arguments of counsel, It Is Ordered that the Motion for New Trial be, and the same hereby is, denied.

A true copy from the records. Attest:

[Seal]

AMOS P. DICKEY, Clerk

/s/ By RAY MONA SMITH, Deputy

In the District Court of the United States in and
for the District of Nevada

Case No. 1025

CHARLES LEE HORSEY, Plaintiff,

vs.

SOUTHWESTERN PUBLISHING CO., INC.,
a Nevada corporation; A. E. CAHLAN, NE-
VADA CITIZENS COMMITTEE INCOR-
PORATED, SOUTHERN NEVADA CHAP-
TER, a Nevada corporation, Defendants.

ORDER DENYING DEFENDANTS' MOTION
FOR NEW TRIAL

This matter coming on regularly to be heard on this 29th day of December, 1954, upon the motion of the Defendants for an Order Setting Aside Verdict and Judgment herein and Granting New Trial, the Plaintiff appearing by and through D. Francis Horsey and Samuel S. Lionel, his attorneys, and Defendants Southwestern Publishing

Co., Inc., a Nevada corporation, and A. E. Cahlan appearing by and through Louis Wiener, Jr., of the firm of Jones, Wiener & Jones, their attorneys, and Defendant Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, appearing by and through Milton W. Keefer, its attorney; and the Court having heard arguments of counsel in support of said Motion, and the Court being fully advised in the premises, and it appearing to the Court that said Motion should be denied, it is therefore

Ordered that said Motion be, and the same is hereby denied.

Dated this 29th day of December, 1954.

/s/ ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed December 31, 1954.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF ORDER DENY-
ING DEFENDANTS' MOTION FOR NEW
TRIAL

To: Southwestern Publishing Co., Inc., a Nevada corporation, and to A. E. Cahlan and to Jones, Wiener & Jones, their attorneys, and

To: Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, and to Milton W. Keefer, its attorney.

You and Each of You Will Please Take Notice, that the Clerk of the above entitled Court did on

the 29th day of December, 1954, enter the Court's Order, a copy of which is attached hereto, denying Defendants' motion for new trial.

Dated this 29th day of December, 1954.

RALLI, RUDIAK & HORSEY and
CLYDE D. SOUTER,

Of Counsel

/s/ By D. FRANCIS HORSEY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed January 5, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Charles Lee Horsey, and

To: Ralli, Rudiak & Horsey and Clyde D. Souter,
attorneys:

You and Each of You Will Please Take Notice that Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan, and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying defendants' motion for a new trial and from the final judgment entered in this action on the 29th day of December, 1954.

Dated at Las Vegas, Nevada, this 21st day of January, 1955.

JONES, WIENER & JONES

/s/ By LOUIS WIENER, JR.

Attorneys for Defendants Southwestern Publishing Co., Inc. and A. E. Cahlan.

BRUCE R. THOMPSON and

MILTON W. KEEFER,

/s/ By MILTON W. KEEFER,

Attorney for Defendant Nevada Citizens Committee Incorporated, Cornet Building, Las Vegas, Nevada.

Acknowledgment of Service attached.

[Endorsed]: Filed January 26, 1955.

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Know All Men by These Presents:

That the undersigned, United States Fidelity & Guaranty Company, a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in the City of Baltimore, State of Maryland, as surety, is held and firmly bound unto Charles Lee Horsey, respondent in the above entitled action, in the penal sum of \$250.00, lawful money of the United States of America, for the payment of which sum well and

truly to be made the undersigned binds itself by these presents.

Dated, this 26th day of January, 1955.

The condition of this obligation is such that whereas Southwestern Publishing Co., Inc., a Nevada corporation, A. E. Cahlan and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, are about to appeal to the United States Court of Appeals for the Ninth Circuit from the order denying defendants' motion for a new trial and from the final judgment thereon,

Now, Therefore, if the said Southwestern Publishing Co., Inc., A. E. Cahlan and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, appellants, shall pay all damages and costs which may be awarded against them on said appeal, then this obligation shall be void, otherwise to remain in full force and effect.

UNITED STATES FIDELITY &
GUARANTY CO.

/s/ By [Illegible]

Attorney-in-Fact.

Acknowledgment of Service attached.

[Endorsed]: Filed January 26, 1955.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND DOCKET RECORD ON APPEAL

It being made to appear to the Court that the time to file and docket the record on appeal in this case in the United States Court of Appeals for the Ninth Circuit is about to expire,

It Is Ordered that the time to file and docket the record on appeal herein in the United States Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including April 25, 1955.

Dated this 1st day of March, 1955.

/s/ ROGER T. FOLEY

United States District Judge.

[Endorsed]: Filed March 1, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the following and accompanying documents and exhibits listed below, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties:

1. Complaint for Damages.
2. Summons, with Marshal's Return attached thereto.
3. Notice of Motion to Separately State Causes of Action.
4. Notice of Motion for a More Definite Statement.
5. Notice of Motion to Strike.
6. Notice of Motion to Separately State Causes of Action.
7. Notice of Motion for a More Definite Statement.
8. Notice of Motion to Strike.
9. Answer of Nevada Citizens Committee, etc.
10. Answer of Southwestern Publishing Co., etc.
11. Notice of Motion to Strike from Answer to Southwestern Publishing Co., etc.
12. Notice of Motion to Strike from Answer to Nevada Citizens Committee, etc.
13. Notice of Motion to Amend Answer filed December 10, 1952.
14. Notice of Motion to Amend Answer filed December 12, 1952.
15. Order upon Plaintiff's Motion to Strike from Answer.
16. Order Denying Defendants' Motion to Strike, Motion for a More Definite Statement, and Motion to Separately State Causes of Action.
17. Stipulation on Plaintiff's Motion to Strike Portion of Complaint.
18. Stipulation Regarding Defendants' Motion to Amend Answer.

19. Request for Admissions, Southwestern Publishing Co., etc.

20. Request for Admissions, Nevada Citizens Committee, etc.

21. Objections to Request for Admissions.

22. Response to Request for Admissions.

23. Court's Instructions to Jury Nos. 1 to 17, inclusive and Verdict, filed September 28, 1954.

24. Copy of Civil Docket Entry of September 28, 1954.

25. Plaintiff's Cost Bill.

26. Motion for New Trial.

27. Order Denying Defendants' Motion for New Trial.

28. Notice of Entry of Order Denying Defendants' Motion for New Trial.

29. Order Extending Time to File and Docket Record on Appeal.

30. Copy of Court Minute Order.

31. Stipulation regarding Amending of Designation of Record on Appeal.

32. Undertaking on Appeal, filed January 26, 1955.

33. Supersedeas Bond.

34. Notice of Appeal.

35. Reporter's Transcript.

36. Plaintiff's Exhibit No. 1, filed September 27, 1954.

37. Plaintiff's Exhibit No. 2, filed September 27, 1954.

38. Plaintiff's Exhibit No. 3, filed September 27, 1954.

39. Plaintiff's Exhibit No. 5, filed September 28, 1954.

40. Defendant's Exhibit "A", filed September 28, 1954.

41. Amended Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of April, A. D. 1955.

[Seal] AMOS P. DICKEY,
Clerk.

/s/ By RAY MONA SMITH,
Deputy Clerk.

In the District Court of the United States in and
for the District of Nevada

Case No. 1025

CHARLES LEE HORSEY, Plaintiff,

vs.

SOUTHWESTERN PUBLISHING CO., INC.,
et al., Defendants.

TRANSCRIPT OF PROCEEDINGS

Be It Remembered that the above-entitled case came on regularly for hearing before the Court at Las Vegas, Clark County, Nevada, on Monday, September 27, 1954, before Hon. Roger T. Foley, Chief District Judge, in and for the District of Nevada.

Appearances: For the Plaintiff: Ralli, Rudiak & Horsey, 200-203 Professional Bldg., 425 Fremont St., Las Vegas, Nevada, by D. Francis Horsey; Clyde D. Souter, Byington Bldg., Reno, Nevada. For the Defendants: Jones, Wiener & Jones, 230 South Fifth St., Las Vegas, Nevada, by Louis Wiener, Jr.

The Court: This is the case of Charles Lee Horsey vs. the Southwestern Publishing Company, Inc., are we ready to proceed?

Mr. Souter: Ready for the plaintiff.

Mr. Thompson: The defendants are ready, your Honor. [1*]

The Court: It might be well if we have the representations, for the record.

Mr. Souter: Clyde D. Souter, counsel for the plaintiff.

Mr. Horsey: D. Francis Horsey, counsel for the plaintiff.

Mr. Wiener: Louis Wiener, Jr., of Jones, Wiener and Jones, for the Southwestern Publishing Company and A. E. Cahlan.

Mr. Thompson: Bruce R. Thompson, for the Nevada Citizens Committee, Incorporated, Southern Nevada Chapter.

Mr. Keefer: Milton W. Keefer, for the Nevada Citizens Committee, Southern Nevada Chapter.

The Court: The clerk will call the roll of the venire.

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

(Roll call of jurors)

(Selection of Jury completed at 11:25 a.m. as follows:) Phyllis Predovich, John M. Brothers, Kenneth Varner, Barbara Hall, Gladys Alley, Louis C. Pico, [2] Walter L. Botts, Gertrude Snowden, Melva Eyre, Norman E. Shurtliff, Mack W. Lyon, Helen M. Belding, Patrick J. Balance (alternate).

(Recess taken, remaining jurors excused until next trial.)

The Court: Will counsel stipulate all members of the Jury are present, and the alternate?

(So stipulated by counsel)

The Court: I think it is time now for the opening statement.

(D. Francis Horsey opened on behalf of the plaintiff, to the jury.)

(Counsel on behalf of defendants reserved their right to make an opening statement.)

The Court: We will take our noon recess at this time, until two o'clock this afternoon.

(Recess taken at 11:50 a.m.)

Afternoon Session, 2:00 o'clock p.m.

The Court: Will counsel stipulate that all [3] members of the Jury, including the alternate, are present?

(So stipulated by counsel)

The Court: You may proceed.

CHARLES LEE HORSEY, SR.

having been first duly sworn, took the stand and testified as follows:

Direct Examination

Q. (By Clyde D. Souter): Will you state your name, please? A. Charles Lee Horsey.

Q. And are you the plaintiff in this action?

A. I am.

Q. Where do you reside at the present time?

A. On La Vereda Road, known as Monticido, Santa Barbara, California.

Q. And how long have you resided there?

A. Well, since June of 1951.

Q. Are you a registered voter of California?

A. I am.

Q. Did you vote at the 1952 general election in the state of California? [4] A. I did.

Q. And had you registered as such voter in the state of California before July 22, 1952?

A. Either right at the end of June or about, just before the fourth of July, of that year, and that was before the general election. And before this case was filed. Considerably before.

Q. When did you come to the state of Nevada?

A. In January of 1905.

Q. And where did you come when you came to Nevada?

A. Well, for a short time I was practicing in Spokane, Washington, for a few months, and learning about the great activities of Goldfield and Tonopah, with the lure of mining and so on, and since

(Testimony of Charles Lee Horsey, Sr.)

I was a young man, why, I decided to come to Southern Nevada.

Q. And where did you go, in Southern Nevada?

A. Into Pioche, Lincoln County.

Q. At that time was Clark County a part of Lincoln County? A. It was.

Q. Were you admitted to the bar of Nevada?

A. I was admitted to the bar in February, I [5] think February the 13th, but anyway, in February, of 1905. A little over a month after I came.

Q. And did you begin the practice of law in Pioche, Lincoln County, Nevada?

A. Yes, sir.

Q. And were you elected district attorney of Lincoln County?

A. First I was appointed by the county commissioners, upon the death of the then district attorney. And in a few months it was incumbent upon me to enter into a campaign for the election, which I did, and in 1906——

Q. You were elected?

A. I was. By, well, I carried all the precincts except two, and what would be now the two counties, was then all Lincoln County.

Q. Were you a member of the State Senate of Nevada, from Lincoln County?

A. In 1913 I was.

Q. And when in the State Senate of Nevada, what committee did you head?

A. I was then the only attorney in the State

(Testimony of Charles Lee Horsey, Sr.)

Senate. I had been chosen to be chairman of the judiciary committee, and I did so.

Q. Were you subsequently district judge of the tenth judicial district of Nevada? [6]

A. I was. For four years.

Q. Did that include Lincoln and Clark county at that time? A. It did.

Q. Were you also state senator from Clark county?

A. Several years later, in 1939, I had been appointed and served as state senator from Clark county, upon the death of the then state senator.

Q. Were you district judge of the eighth judicial district of Nevada?

A. Yes, for a short time.

Q. That was in Clark county?

A. Yes, sir. Shortly before I went up to the Supreme Court.

Q. And do you recall any action on the part of the bar of Clark County which lead to your appointment as district judge?

Mr. Thompson: Just a moment, if the Court please, I would like to interpose an objection to that question, your Honor, on the ground it is wholly irrelevant, immaterial, and doesn't bear upon the issues in this case.

The Court: The objection will be sustained.

Mr. Souter: Q. Were you subsequently a justice of the Nevada Supreme Court? [7]

A. I was.

Q. And was that also by appointment?

(Testimony of Charles Lee Horsey, Sr.)

A. At first. Orr, who only had been reelected and serving a short time, was elevated to the United States Court of Appeal, and then resigned and I was appointed first by Governor Pittman, as Supreme Court Justice.

Q. And did you subsequently run as candidate for that office? A. I did. In 1946.

Q. And were you elected?

A. I was, thanks to a large majority of Clark County.

Q. And do you recall that at that time you received about seventy-five per cent of the vote of Clark County?

Mr. Thompson: I would like to object to that question on the ground it is irrelevant, immaterial, and it pertains to an element of damages that is wholly speculative. It has nothing to do with the issues in this case.

The Court: I can't see where it has any bearing.

Mr. Thompson: If the Court please, it seems to me the mere fact that he was elected, I think, would be sufficient.

Mr. Souter: Well, may I be heard, sir? [8]

The Court: The ruling stands.

Mr. Souter: Q. Are you an honorary member of the State bar of the State Bar of Nevada?

A. Yes, sir. In 1945 I received a certificate, because of having served forty years, and I received a very nice certificate in regards to having served forty years, in good standing, as a member of the Bar.

(Testimony of Charles Lee Horsey, Sr.)

Q. At this time, if the Court please, I would like to offer in evidence, the case of the State of Nevada, on the relationship of culinary union local number two two six, Alan Shore, aka John Doe I and Vivian Shore, aka Jane Doe I, against the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, and the Honorable A. S. Henderson, Judge of Department Two, thereof, respondents, in Volume 66 of the Nevada Reports, at page 166.

Mr. Thompson: We would like to object to the offer, your Honor, upon the ground that the evidence is incompetent, that it relates to a decision of a case which decision purports to set forth legal reasons for the conclusions reached, that it is the province of the Court, rather than the Jury, to determine matters of that character, and that if anything of that nature involved in that case is material to the issues which the jury will decide here, that those matters should be covered by instructions to the Court rather than by reception in evidence, in the Volume of Nevada Reports.

Court: That's the so-called White Cross case, is it? The objection will be overruled. The exhibit will be admitted in evidence. Plaintiff's Exhibit I.

Mr. Souter: Expressly not for the purpose of showing the loss of an election, but for the sole purpose of indicating a state of opinion in Clark County, I would now like to offer in evidence, the official returns of the general election of the state of Nevada for the year 1946, and the official re-

(Testimony of Charles Lee Horsey, Sr.)

turns of the general election of the state of Nevada of 1950, insofar as those returns indicate the vote in Clark County, in those two elections, for Mr. Justice Horsey, for Justice of the Supreme Court of Nevada.

Mr. Thompson: We would like to object to the offer just made, your Honor, on the ground that the offer of evidence offered is wholly irrelevant and immaterial. Judge Souter's offer recognizes his and our understanding of the law, that the loss of an election is not a proper element of damages in a case of that character, because it's too speculative and remote, and no one can properly judge the reasons why a person wins or loses an election, for all of the reasons which go together to achieve that result. Now, if that is the law, as we understand it to be, the evidence offered is doubly immaterial for the purpose suggested by Judge Souter and is doubly speculative and remote and incompetent, [10] because if the loss of the election itself is immaterial in this case, well, the reaction of the voters in any particular area of this state, is equally immaterial, speculative, remote, and incompetent.

The Court: I should think that the 1950 election returns might be admitted, but I can't see any relevance to the 1946 returns.

Mr. Souter: For the purpose of the contrast.

The Court: Well, we know he was elected in 1946. It has already been testified to.

Mr. Souter: But my thought in that connection, I respectfully submit to your Honor, is this, that

(Testimony of Charles Lee Horsey, Sr.)

this advertisement that is the subject matter of this suit, was published in Clark County, and came to the attention of the people in this county, I think——

The Court: I think the 1950 returns ought to be admitted. I will admit the 1950 returns, but the 1946 are not admitted.

Mr. Thompson: Inasmuch as Judge Souter made a combination offer, I think it behooves me to object singly to the return for the year 1950 upon the grounds which I stated as to the returns for 1946.

The Court: The record may show that the objection is overruled as to the 1950 returns.

Mr. Souter: I would like now to offer in evidence a copy of an advertisement appearing in the Review-Journal [11] of Las Vegas, Nevada, which it has been admitted was put in the paper by the defendant Nevada Citizens Committee, Southern Nevada Branch. I offer this in evidence.

Mr. Thompson: We don't object.

The Court: It will be admitted, Exhibit three.

Mr. Souter: I would like to offer in evidence the case of the City of Reno, a municipal corporation, petitioner, vs. the Second Judicial District Court of the state of Nevada, in and for the County of Washoe, William McKnight, judge of said court, and Charles Reel, and Alvin Rae, respondents, found at page 416, in Volume 59 of Nevada Reports.

Mr. Thompson: We object to the offer on the ground that the decision therein set forth, is irrele-

(Testimony of Charles Lee Horsey, Sr.)

vant and immaterial to any issue in this case, and it is an offer of a legal opinion, which is proper for instruction by the Court to the jury, if such instruction becomes necessary, and is not proper as evidence in this case.

(Discussion)

The Court: I am going to sustain the objection. It is a matter for the court in its instructions. (Exhibit not in evidence.)

Mr. Souter: Justice Horsey, what court in the United States has the last word on what is the law?

Mr. Thompson: If the Court please, I object [12] to the question on the ground it is irrelevant, immaterial and a matter for instruction by the Court, and it is a question of law.

The Court: The objection will be sustained.

Mr. Souter: In the Supreme Court of Nevada, does the Court on an appeal, hear witnesses?

Mr. Thompson: If the Court please, I make the same objection.

The Court: I would like to know what the purpose of that question is.

Mr. Souter: I wish to show the procedure in that Court in order that the jury, as laymen, may understand what the function of that court is, simply to determine the questions of law that they have nothing to do with the record as made but that they are called upon merely to apply the law to a case that comes before them, to determine whether or not the lower court, in their opinion correctly or incorrectly decided the case.

(Testimony of Charles Lee Horsey, Sr.)

(Discussion)

The Court: Well, we will consider that matter upon instructions, if I think it is necessary later on, but I can't see where it is an issue of fact to go to the Jury right now. Objection will be sustained.

Mr. Souter: In arriving at your view in the White Cross Drug Store case, were you influenced in any way [13] by anything other than what you believed to be the law, which applied to that particular case?

Mr. Thompson: If the Court please, I would like to object to that question, first, on the ground that it is irrelevant and immaterial, it is too general in that it does not confine Judge Horsey's answer to what he consciously did, and I think if he is to testify regarding any influences which were brought to bear upon him with reference to his opinion in that particular case. It should be limited to influences that he knew about and that he was conscious of.

The Court: Objection overruled. You may answer the question.

Mr. Souter: In the determination of the appeal in the White Cross Drug Store case from Las Vegas, were you influenced by anything other than what you believed to be the law, as applied to the legal questions arising in that case?

A. I was not influenced in any respect except trying to do my duty, and to follow my oath of office.

Q. Do you recall a visit on a man named Paul

(Testimony of Charles Lee Horsey, Sr.)

Gardner, before the election of 1950? At Lovelock, Nevada?

A. I recall meeting him and discussing matters with him. [14]

Q. What was Paul Gardner's business, do you know?

A. He had the weekly newspaper, I believe the Review-Miner, of Lovelock, Nevada. That isn't the exact name.

Q. And do you recall about when it was that you made that visit?

A. Well, it was along about the end or nearly that, thereabouts, at Lovelock.

Q. The end of what, Sir?

A. Well, October. During the—I was just starting on my campaign.

Q. That was in 1950? A. Yes.

Q. And you were a candidate for the office of Justice of the Supreme Court, to be voted on on November 5th, 1950, that year?

A. That is right.

Q. Will you please tell the members of this jury, to the best of your recollection, just what the conversation was that you had with Paul Gardner, at that time, in Lovelock?

A. Mr. Gardner started in by something rather startling. He said, 'Are you pro-labor?' referring to me. I said, 'Yes. I have always been for labor,' and [15] then I referred to the fact that I was a state senator, in a political office, and that I did a number of things for labor when I was in the

(Testimony of Charles Lee Horsey, Sr.)

state senate, way back in 1913. A number of matters passed in regard to labor at that time, and I was acting in regard to it. And I mentioned that to Mr. Gardner, but I said, 'As you know, I have been a district judge also, and also a justice of the Supreme Court for the past five years, and that I fully realize my duties,' and that certainly I would not permit it, on the pro-labor feelings that I might personally have, to have the slightest effect, or any effect whatsoever, except as to the law, in regards to my opinion on the White Cross Drug Store case, to which he had referred. He seemed to question some—Mr. Gardner—my prior decision, reconsideration, as to the White Cross Drug Store case, and he couldn't quite understand why there had been a reversal by the majority of the Supreme Court, and permitting pickets to picket back and forth, peaceably, before the White Cross Drug Store, and he was very, very narrow in what he had said about it, and——

Mr. Thompson: I move that his characterization of what Mr. Gardner deemed, be stricken, and the jury be instructed to disregard it.

The Court: That will be stricken. All that he just stated with regard to what Mr. Gardner seemed [16] to think.

Mr. Souter: Mr. Justice Horsey, please limit your recital to the jury, of this conversation, to just what was said by you and by Mr. Gardner, and avoid any characterization of and any statements made by Mr. Gardner.

(Testimony of Charles Lee Horsey, Sr.)

A. Gardner mentioned something about that some of the laboring people might be bad labor racketeers. Well, I said, I don't know anything about that, that is, I haven't come in contact with them, but if they are such as that, I condemn them just as much as you do. I told Gardner at that time, and I pointed out to him, that my decision or my opinion on rehearing, was based upon the decisions of the United States Supreme Court of our own State of Nevada, of the California decisions in regards to picketing, and that I had a very recent opinion that had been presented or that I found in the advance sheets, from the State of Washington, and I mentioned those various decisions in my written opinion on rehearing, pointing out to Mr Gardner that it certainly wasn't a question of my personal views, the overwhelming majority of our courts in regard to peaceable picketing had been upheld, and it behooved me to follow the law. And Gardner I could tell wasn't too pleased and yet I went into great length, probably required a half an hour or so. My son was with me at the time, Charles Lee Horsey, Junior.

Q. Was there anybody else present at the [17] time of this conversation besides you, Gardner, and your son, Charles?

A. There was a printer that seemed to be interested about baseball or football and he dropped in to talk about the game over the radio. He had heard it, and then he was there a little while, and nothing occurred in regard to conversation between

(Testimony of Charles Lee Horsey, Sr.)

Gardner and me, and then he left and went back to his work in a back room.

Q. So that the only persons present during the time of this conversation, were you, your son, and Gardner.

A. Yes. Pardon me, Judge, he did not even mention to me as to whether I had any affiliation with labor racketeers, all he was asking me about was whether I was pro-labor. I said, I have always been for the working man. I was a poor boy, but that that had nothing to do with my judicial opinions, because I even told Gardner that I was under oath, as a Supreme Court Justice, and I certainly was not prejudiced in regards to matters of that sort, because I would be unfit to be there if I was.

Q. Have you ever at any time, on the district bench, or on the supreme bench, permitted your feelings toward labor to influence your legal decisions in any way whatsoever?

A. That is true. I was uninfluenced completely, [18] in that respect. Another thing that happened between Gardner and me, was I tried to make it clear to Gardner about perhaps a new legislative act might occur in the future, known as the right-to-work statute, and I realized that it was being agitated but our court couldn't pass on it, that it was for the legislature. And I told Gardner, I said, if that is an act, and I am a member of the court, I shall certainly give full consideration to it. I told that to Gardner.

Q. Did you, in any way, shape, or form, in that

(Testimony of Charles Lee Horsey, Sr.)

conversation, ever indicate by any words of yours to Gardner, that you were in favor of labor racketeers?

Mr. Thompson: I object to that question, your Honor, on the ground it calls for the conclusion of this witness, and to what somebody else understands, and what he said. He has already stated what he said.

Court: Well, the objection will be sustained. This witness' testimony at this time should be confined to what actually was said by those present. That's a summation or giving us what the effect of the conversation might be. We are not looking for that here now. It is merely to see what was done and said at that meeting with Mr. Gardner, and that question is certainly outside the purview of that function.

Mr. Souter: I asked the witness, if I may respectfully report to the Court, whether or not he, at any [19] time, said he was in favor of labor racketeers, which is made a part of this advertisement.

(Question asked and witness permitted by Court to answer same.)

Mr. Thompson: Well, I make the same objection to that question, your Honor, and also the further objection that it is leading, because Judge Horsey has testified at length as to what was actually said. It is for the members of the Jury to draw their own conclusions as to what he said and Mr. Gardner

(Testimony of Charles Lee Horsey, Sr.)

repied, and it is for Mr. Gardner to draw his own conclusions.

Court: You may answer that question.

Mr. Souter: Q. Did you ever say to Paul Gardner that you were in favor of labor racketeers?

A. I certainly didn't. I condemned any reference that he made to that, that that shouldn't be tolerated, or words to that effect.

Q. I show you this advertisement that has been offered in evidence and marked Plaintiff's Exhibit 3 and I ask you whether you know how many days before election that advertisement was published?

A. I learned after I had left Las Vegas——

Mr. Thompson: Well, if the Court please, to save time, we will stipulate it was published on the fifth of November, 1950, and that the election was on November [20] the seventh, 1950.

Mr. Souter: Very well, thank you, Mr. Thompson.

Court: I wonder if the Jury understands that stipulation? Would you read that, please?

(Stipulation read to Jury)

Mr. Souter: Before the publication of the advertisement which has been received in evidence as Plaintiff's Exhibit 3, did any of the Defendants, or anybody representing them, or anybody from the Nevada Citizens Committee, or anybody from the Review-Journal, the paper published by the publishing company which is a defendant in this action, or Mr. Cahlan, call you up, or get in touch with you in any way, shape or form, to check with

(Testimony of Charles Lee Horsey, Sr.)

you as to the truth of the conference with Mr. Paul Gardner?

A. They did not. The first time I saw that article was two days after election.

Mr. Thompson: I object——

The Court: The question has been answered. The latter portion may go out as not responsive.

Mr. Souter: When did you first see that advertisement?

A. I think it was Thursday, following the election of Tuesday. That would have been the eighth of November that I received it, through the mail.

Q. Did the publication of the advertisement, which has been marked Plaintiff's Exhibit 3, published in the Review-Journal, on behalf of the Nevada Citizens Committee, have any effect upon you personally? Yes or no.

A. It certainly did, yes.

Q. Will you tell the Court and Jury what effect the publication of that advertisement had upon you.

Mr. Thompson: I object to the question, principally its form, your Honor, because the purpose is to try to have this witness testify to the effect that certain reactions of his were caused by the publication, and actually, if he is going to testify he should testify to—as to how he felt after he read the publication, without any effort to testify as to the cause of why he felt that way.

The Court: Isn't that a rather narrow distinction? The effect and how he felt?

(Discussion)

(Testimony of Charles Lee Horsey, Sr.)

The Court: The objection has been overruled. You may answer the question.

Mr. Souter: The Court has overruled the objection and you may now tell the Jury what the effects were.

A. I was right in the midst of my duties on the Court, which continued on for two months after the election, until the first of January following, and I was very busy [22] on the Court. I had to preside nearly every day or every couple of days, as the cases came, and the arguments were had. And I had to preside there during all that time, and I had little time except at night to commence to realize the enormity of this, and the effect that it was having on me. As to all the time that I could give to it then, and after the term expired. I had no money, and I undertook to sell my home there in Carson, and it took several months before I came down here. I had much more time. I commenced to realize the enormity of the injury, and it got so that I certainly couldn't talk to everybody that I would meet in regards to the situation, I had carried Carson City and Ormsby County where I lived, the last time, but the first time I never carried it. But the last time I got a substantial majority. And one of the first things that occurred to me was that I would be walking around the streets——

Mr. Thompson: I object to that as a voluntary statement. Not responsive to the question, your Honor.

The Court: So far we have not had any answer

(Testimony of Charles Lee Horsey, Sr.)

to the question, what was the effect. We have had a reason, he didn't realize it for a period of time, but——

Mr. Souter: The Court has suggested that you get right down to the effect that this has had.

A. That is what I am attempting to do. It can't just be done by a conclusion. I have to explain a little [23] bit in regards to what occurred in my mind.

Mr. Souter: All right. Well, get to the meat of it as quickly as you can, please.

A. Well, one of the first things is when I was attempting to walk up and down the streets of Carson and they didn't know me because I thought the people of Clark County knew me, and it was Clark County that the article occurred in, and I commenced to think what effect that would have, must have had, where they knew me so well, that I must have been considered more or less a criminal or something because of their accusations, over and over again, plainly implying and strongly indicating that I was in association with labor racketeers. And when I would meet people in Carson, going along, I would hate to stop and talk with them, because it looked as though that they would have some suspicions as to my honor, and integrity, and that was repeated more and more as time went on, until I got so I didn't want to meet people, but I would take walks at night, and most of the time, even while I was still on the Court, I would think so much at night in regards to these articles, I mean

(Testimony of Charles Lee Horsey, Sr.)

these statements, and by the way, I understood there were fourteen thousand that were distributed only two days before election——

Mr. Thompson: I move that that be stricken as not responsive. [24]

The Court: That part will go out, about the distribution.

A. Pardon me. And of course, even though I had to be on the Court, there were times I couldn't sleep at all, but would have to go down and do my duty on the Court and preside the next day. But after that it was worse.

Mr. Souter: Now, then, you came down to Las Vegas, to endeavor to start the practice of law again?

A. Yes, I did. And in Carson I thought——

Q. No. I mean in Las Vegas.

A. I know, but just a minute, please, Mr. Souter, at Carson I had thought a little bit about undertaking to practice law there, and then it occurred to me, why, I am not known there, not nearly as well as Las Vegas, and I had better undertake to practice down in Clark County. It turned out to be a mirage. When I got down here and realized the enormity of the injury, and the hundreds and thousands of people that had come in that I didn't know, I realized that it would take all my time and more than my time to try to meet people and disabuse their minds as to my honor and my integrity, and how could I practice law under those conditions? When the expenses of practicing law

(Testimony of Charles Lee Horsey, Sr.)

had greatly increased, and there were about seventy attorneys in Clark County, and I would have to start all over again, and give my whole attention to trying to disabuse and trying to [25] overcome the injury I had received.

Cross Examination

By Bruce R. Thompson:

Mr. Thompson: Q. Judge Horsey, during your lifetime, what elections have you lost?

A. During the years?

Q. Uh huh.

A. Oh, well, I ran for Congress in 1928. I was a Democratic nominee, but there were nearly all Republicans, Herbert Hoover, and so on, elected at that time. I was highest on the Democratic ticket for Congress except the Honorable Key Pittman, who had been United States Senator for years, and all the others on the State ticket received less than I did.

Q. Is that the only one?

A. Oh, no, there were other campaigns. Way back in 1910, when I undertook to run for district judge, when I was 28 or 29 years old, 30, and then Judge Brown retired and went to Reno to practice, and Elko County was coupled then with Lincoln and Clark counties, and I ran for district judge, but the large population then wasn't down here, it was at Elko county, and Judge Taber, who was my associate later on at the—on the Supreme Court—we were always friendly— [26] won at the time.

(Testimony of Charles Lee Horsey, Sr.)

Well, the result was that Taber defeated me with about five hundred majority. The large vote from Elko county was responsible. I carried Lincoln county then.

Q. Were there any other elections that you lost?

A. Oh, yes. In 1940.

Q. Which one was that?

A. As district judge, but——

Q. Was that in Clark county?

A. But that was at the primary.

Q. That was in Clark county.

A. That was at the primary.

Q. In Clark county, Nevada?

A. Well, it was Clark and Lincoln, then.

Q. Clark and Lincoln counties, yes.

A. Yes.

Q. And then the last election you lost was from, was in November of 1950, when you ran against Judge Merrill, or he ran against you, for the Supreme Court?

A. I felt, in regards to 1950, if it hadn't been for that article——

Q. Well, I say, that's the last one you lost, wasn't it?

A. Yes. And I don't believe I lost that, [27] legitimately.

Q. Now, when you first went on the Supreme Court of Nevada, you were appointed, were you not, in 1945?

A. '45. Yes. And then I had to run in '46.

Q. At the next general election?

(Testimony of Charles Lee Horsey, Sr.)

A. And ran against Mr. Mathews, and I won.

Q. Now, in 1945, when you decided to accept the appointment as Justice of——

A. Well, I was appointed as district judge first down here, and I was down here for about three months, on that court, when I was petitioned again.

Q. All right, wait a minute, you remember when you were appointed to the Supreme Court, in 1945, do you not?

A. Well, it was about the 10th of October.

Q. 1945? A. Yes.

Q. And at that time you decided to accept the appointment, which was offered to you, did you not?

A. I did, after a considerable, I had—there had been a petition around——

Q. Well, you decided to accept it, didn't you?

A. Well, I knew about that——

Q. Well, did you accept the appointment?

A. I did, eventually, yes. [28]

Q. And when you accepted the appointment, you knew that you were going to have to close your law office, didn't you?

A. At that time? Yes.

Q. And when you accepted the appointment, you knew that you were going to have to abandon whatever law practice you had at that time?

A. I thought that I would.

Q. Yes. And you also knew that in the Fall of 1946 you would have to run for re-election for the balance of four years, the remainder of that term of office? A. Yes.

(Testimony of Charles Lee Horsey, Sr.)

Q. When you accepted the appointment you knew that you had those things in front of you, didn't you? A. Yes.

Q. And you also knew that you might be defeated in that 1946 election? A. Oh, yes.

Q. But when you decided to run in 1946 you knew that if you were elected to the Supreme Bench for four years, you would be away from Clark County, and away from your former associates, for that period of time, did you not?

A. Yes.

Q. You knew that?

A. I fully thought that I would continue on my [29] duty on the Supreme Court.

Q. And you knew that you would have to run again in 1950, didn't you?

A. 1950? Well, I didn't know that.

Q. Well, you knew that somebody could file against you if they wanted to.

A. Yes. It turned out that way.

Q. And that there was a possibility?

A. Very seldom on the Supreme Court have the justices had to campaign, and one right after the other—so close together—

Q. And you knew of the possibility that you might have to return to Las Vegas to resume your law practice? A. Sir?

Q. You knew of the possibility that you might have to return to Las Vegas to, or at that time in Carson, or go to Reno or some place else, to re-

(Testimony of Charles Lee Horsey, Sr.)

sume your law practice in the event you were defeated?

A. Well, after Mr. Merrill decided to oppose me, why then I felt duty-bound—I had only served a part of a term—and I had the right, of course, to continue on the bench, and I liked the work on the Court, and I thought I had been successful.

Q. There has been received in evidence, Judge [30] Horsey, the decision of the Supreme Court in the case of the culinary workers against the court. You are familiar with that decision?

A. Well, is that the White Cross drug store?

Q. Yes. The White Cross drug store case.

A. Yes.

Q. And is it not true that that case got to the Supreme Court of Nevada by appeal from a judgment of the district court of Clark county?

A. Yes, sir.

Q. And is it not true that Judge Henderson, who was then the judge of the district court of Clark county, did not agree with you as to the decision in that case?

A. Well, he prohibited picketing. He forbade—he stopped the picketing at the White Cross drug store.

Q. That was the effect of Judge Henderson's decision?

A. That was Judge Henderson's decision, and then it was appealed to the Supreme Court.

Q. And the effect of the opinion of the Supreme Court, concurred in by you and Judge Eather, was

(Testimony of Charles Lee Horsey, Sr.)

to say that the picketing was lawful, and it didn't have to be stopped, is that correct?

A. Following it—that was done largely upon the basis of a tremendous amount of authorities that we looked [31] up.

Q. Now, Judge Badt of the Supreme Court, Judge Milton Badt, disagreed with you and Judge Eather, did he not?

A. Right then, but as I understand, since then Judge Merrill has virtually indicated that if my decision had gone up to the United States Supreme Court it would have been upheld, and after great research, why, Judge Badt has said that he decided to concur with Judge Merrill, because Judge Merrill has indulged in great research in regard to it, and so in a measure, he changed his opinion. Badt did.

Q. I move that the answer be stricken as not responsive. A. And he concurred with it.

The Court: The latter part, as to why he thinks Judge Merrill, or Judge Badt, did something, may go out as not responsive, and may be stricken.

Q. I will repeat the question. In the decision of the White Cross Drug case, in the Supreme Court, didn't Judge Milton Badt of the Supreme Court, disagree with you and Judge Eather?

A. Yes. It was a majority decision, of Judge Eather and me.

Q. And Judge Milton Badt of the Supreme Court agreed with Judge Henderson of the local district court? [32]

(Testimony of Charles Lee Horsey, Sr.)

A. At that point, yes. But you should bear in mind that his later action——

Q. Well,—now, with reference to Plaintiff's Exhibit 3, the advertisement which was published in the Las Vegas Review-Journal, of November 5, 1950, you are familiar with that, are you not, Judge Horsey?

A. Oh, I haven't read it recently, but I know what——

Q. Well, you know that that ad contains, as a part of it, a reprint of an editorial by Mr. Paul Gardner, which he printed in his Lovelock paper?

A. Yes, and that was, I learned it was greatly embellished, and a full page, and all that, later, here, two days before election and I had no chance to even answer it.

Q. Now, as shown by this ad, that editorial was printed in the Lovelock Review-Miner, on October 26, 1950, was it not?

A. Yes, but I was making my campaign. I glanced at some of those papers, I think, in town, but I am not sure that the Lovelock Miner or Review-Miner, was one of them or not. I noticed some Elko papers and the Fallon paper, and I glanced, perhaps—as to the Review-Miner—if I got a hold of it. But I didn't seriously ponder it because it wasn't any full-page ad, and it was a small paper.

Q. You did see that editorial, did you not?

A. Well, it could have been that I glanced at it, but I had had a hard day. I had been all the way from Ely, campaigning at Eureka and Austin.

(Testimony of Charles Lee Horsey, Sr.)

And finally, in the evening, my son and I arrived at Fallon, and it was maybe nine o'clock that night when we walked down the street and picked up some newspapers.

Q. Well, Judge Horsey, what did you do about that editorial after you read it?

A. Well, I did nothing. I was right in the midst of my campaign. I didn't consider—if I read it fully, I didn't consider it was—I thought it was reprehensible. It wasn't in accord with what he and I had discussed, if it was from Gardner.

Q. During the latter part of your service on the Supreme Court didn't you suffer some unfortunate accidents and illnesses? A. What's that?

Q. Didn't you have some unfortunate accidents?

Mr. Souter: If the Court please, I object. I can't see any relevancy——

The Court: I can't either.

(Discussion)

The Court: Will counsel approach the [34] bench, please?

(Counsel approach bench)

Court: The objection will be sustained.

Mr. Thompson: Q. Now, when you first saw Mr. Gardner in Lovelock in his newspaper office about the tenth of October, Mr. Gardner asked you whether you were pro-labor? A. Yes.

Q. And you answered, did you not, in effect "I admit I am"? A. Yes.

Q. And then you went on to explain what you

(Testimony of Charles Lee Horsey, Sr.)

meant by your answer, is that right? I mean, you have told us what you said.

A. I explained not only in regards to the decisions that I had looked up, and at that time I had written—I mean, referred—to them, the California and the state of Washington, and the United States Supreme Court decisions, and our own State.

Q. All right, now, will you tell the jury what you told Mr. Gardner about your being two persons?

A. About what?

Q. About your being two persons.

A. Two persons? Yes, I brought that out to Mr. Gardner. In the last trial my son fully explained that. [35] He was there, and he mentioned it, I think, at the last trial, that I had tried to make it plain to Mr. Gardner that I was like two persons, that as a political officer, when it was my duty to help formulate legislation, that I had been strongly for certain labor legislation, and then I said to him, 'when it comes to the judgeship I am like two persons. I told you I was pro-labor, personally. Individually. But I am altogether a different person, when it comes to performing my duties on the Supreme Court, as I had been and felt, when I was a district judge, because I was under an oath of office. I couldn't be prejudiced in favor of either side, or either interest'.

The Court: We will take a short recess now.

(Recess taken at 3:10 to 3:20 p.m.)

Q. Judge Horsey, what effect did the fact that

(Testimony of Charles Lee Horsey, Sr.)

you lost the election to Judge Merrill, have on your personal situation? And your personal feelings?

A. It wasn't—the two were combined. The drastic, the severe effect was the article, the Las Vegas Review-Journal article, and the Lovelock paper article, because that was an assailment of my honor, and my integrity. And I never had had that experience before.

Q. Well, what effect did the loss of the election have? [36]

A. The two were coupled together, and I don't believe I was defeated, because fourteen thousand copies were circulated at the last minute, there were thousands of new people in Southern Nevada, and it was, I think at the last trial, it was pointed out by Judge Souter, that there were seven or eight different times that labor racketeers was associated with my name, in that article.

Q. Well, referring to the last trial, you testified at the last trial, did you not? A. Yes.

Q. And you testified as a witness, didn't you, just as you are testifying now?

A. Well, it was the substance of it, and my great injury, that I felt.

Q. What did you say at the last trial about the effect of the loss of the election upon you?

A. Well, I said that, in substance, that I was broken in health, at least that my spirit had been broken. And my health had been injured and my mental faculties had been greatly injured because of the worry and the fact that I had no opportunity

(Testimony of Charles Lee Horsey, Sr.)

to counter-act the viscious effect of those statements, and if you figure them up, there would be about a hundred thousand times, considering the fourteen thousand copies of that article, in which I was without chance of reply, and I had been in a pretty high position. [37]

Q. Well, Judge Horsey, as I understand, you didn't, from your direct testimony, you really didn't feel the enormity of the situation, as you term it, until, say the Spring of 1951. Is that true?

A. Oh, I felt it all the way along, after the election, but of course, I was very busy there on the Court, and I was proud enough that I kept on, day after day, for two months after that.

Q. Is it not true that you did not file this suit against the Southwestern Publishing Company and the Citizens Committee, and Mr. Cahlan, until July of 1952?

Mr. Souter: I object, if the Court please, on the ground it is entirely immaterial.

The Court: The objection is overruled. You may answer the question.

(Question read)

A. I had been discussing that with my attorneys numerous times before.

Q. I would like to ask, is it not true that the suit was not filed until July of 1952?

A. Yes. June or July. July the 22d, I think.

Q. Of 1952? A. Yes.

Q. Judge Horsey, with reference to your [38] statement that you took walks at night, hasn't it

(Testimony of Charles Lee Horsey, Sr.)

been your practice throughout most of your life, to take walks at night?

A. Oh, yes, but I was glad to meet people in the daytime too.

Q. But you—hasn't it been your habit, throughout most of your life, to take walks at night?

A. Because——

Q. Well, has it or hasn't it?

A. Well, I was forced to it, because I was busy all day long in court, for two months after the election.

Q. That's all, your Honor.

CHARLES LEE HORSEY, JR.

having been first duly sworn, took the stand and testified as follows:

Direct Examination

By Clyde D. Souter:

Mr. Souter: Q. Will you state your name, please? A. Charles Lee Horsey, Jr.

Q. Where do you reside?

A. Las Vegas, Nevada. [39]

Q. How long have you lived in Las Vegas?

A. Well, we moved to Las Vegas in 1922. I was away to school for some time. I worked in Los Angeles for a number of years, and I came back to Las Vegas to live in 1941, and have lived here continuously since that time.

Q. Are you in business here? A. I am.

Q. What business? A. General insurance.

(Testimony of Charles Lee Horsey, Jr.)

Q. During the election trip for the election of 1950, did you accompany your father on that trip?

A. I did.

Q. And your father is Charles Lee Horsey, Sr.?

A. He is.

Q. Do you recall calling on a man named Paul K. Gardner, up in Locelock, the publisher of the weekly up there called the Lovelock Review-Miner?

A. I do.

Q. And who was present during your call there?

A. Mr. Gardner, my father, and myself.

Q. What about this man that came in about the football scores, did he stay there for any length of time? [40]

A. No, he was working there in the print shop, and he just came out and announced some score, and went back to his work.

Q. And will you please tell this jury just what conversation took place between your father and Paul K. Gardner, during that time, as closely as you can remember the conversation, tell it to the jury.

A. We walked into Mr. Gardner's office and my father greeted him first, and then he introduced me to Mr. Gardner, and I mentioned that I had had the pleasure of meeting Mr. Gardner previously. Mr. Gardner asked us to be seated. My father was seated on Mr. Gardner's right and I was seated across the desk from the two of them. Mr. Gardner turned to my father and said, 'I understand you are pro-labor?' My father smiled a little bit and said,

(Testimony of Charles Lee Horsey, Jr.)

'I admit I am.' And then he said, 'Now I will proceed to tell you what I mean by that.' And then he went into a long conversation, great details as he always has done with every speech he writes, went back to his early childhood, as a matter of fact, and talked about his struggles getting through school, moving from the city back to his old home town in Delaware, to get through high school, and then taking a few years out working, in order to accumulate some money to go to the university to study law, and finally getting through law school, getting to Pioche, and then more detail about what [41] transpired the time we were in Pioche and in full, about the office he held in Lincoln county, then down to Clark county, same thing all over again. And then on up to Carson City, and on to the Supreme Court. Explained to Mr. Gardner in minute detail that he had been in the public eye all his life, practically, since he had been in Nevada. How he had been a legislator, a district attorney, a prosecuting attorney, a defense attorney, district judge, and supreme court judge. How he had had to be one person at one time and another person at another time. Then he went into more detail about the particular case in which Mr. Gardner was interested and that was the White Cross Drug case. He explained to him that the court, he and Judge Eather, had followed the precedent set by the Nevada Supreme Court, who was on the Court at the time the decisions were rendered. Went into a recitation of the different Supreme Courts of the other

(Testimony of Charles Lee Horsey, Jr.)

states, and the Supreme Court of the United States, and tried to point out to Mr. Gardner that if the people of Nevada were not satisfied with the law as it related to labor and picketing, that the remedy lay with the legislature. That there had been considerable talk about a right-to-work bill being enacted, and if that did transpire and then a case came up before the Court, then it would present an entirely different problem. He would have to give that the same duty and put in the same work on that as he had done on all other cases that came before him. Mr. Gardner sat there listening. I don't know exactly how [42] long we were there, but I was a little tired when we got there, and I thought that, well, we are starting out on the campaign and if every stop we make takes as long as this we will never get around the state in the short length of time that we have. After my father finally finished, Mr. Gardner stated that in his opinion labor had become too powerful. Mentioned the fact that labor unions were dominated by labor racketeers and that his own employees, his own printers there were making more money than he and his wife were making, and that they were both college graduates. I think that just about covers—there were a few other things that transpired, but—my father mentioned to Mr. Gardner that, just before we departed, that he would not be able to advertise too extensively and spend as much money in this campaign as he had done previously, and that he had had to cut Mr. Gardner's ad down as well as other news-

(Testimony of Charles Lee Horsey, Jr.)

papers, throughout the state. And then I think my father expressed a desire to see an attorney there in Lovelock, I believe his name was Mr. Young, and Mr. Gardner finally did locate him on the telephone, and after that we bade Mr. Gardner good bye and left.

Q. This paper in which the editorial appeared, according to Exhibit 3 in this case, was published on October 26, 1950. Did you and your father run across that paper during the campaign or after election day? [43]

A. It was after election insofar as I was concerned. We left Lovelock, I believe, the day after we were in Gardner's office, and never did return to that county. And I did not see that article until after election. I saw the article in the Review-Journal the day of election.

Q. Your father returned to Carson City after his term as Justice of the Supreme Court expired, did he not? Or came to Las Vegas, I mean?

A. Yes. Several months afterwards, yes, sir.

Q. Do you know whether he attempted to engage in the practice of law? A. Yes, he did.

Q. Where?

A. In my suite of offices in Las Vegas, 215 Bridger.

Q. Did he get furniture and so forth?

A. Yes.

Q. And did you have an opportunity to observe your father during that period? A. I did.

Q. And was he able to continue to practice law?

(Testimony of Charles Lee Horsey, Jr.)

A. He came down to the office, I'll put it that way, late in the morning. Did something he had never [44] done before, to my knowledge, when he started going home early in the afternoons.

Q. Did you have an opportunity to observe what his mental reaction was, to the publication of this advertisement in the Review-Journal, that is marked Plaintiff's Exhibit 3? A. I did.

Q. What was that reaction, as you reviewed it?

Mr. Wiener: We would like to object to the witness answering the question as to what the mental reaction of Judge Horsey was, to a particular situation, as it was.

The Court: I think you can just leave out the main word "mental" there,—if he noticed any reaction.

A. The body was there, the heart and spirit wasn't.

Mr. Wiener: Your Honor, I would like to move to strike——

The Court: It may stand.

Mr. Souter: You may cross examine.

Cross Examination

By Louis Wiener, Jr. [45]

Mr. Wiener: Q. Mr. Horsey, you testified that after your father returned from Carson City, Nevada, to Las Vegas, in 1951, he didn't come down to the office until late in the morning, or early in the afternoon?

A. Late in the morning, I said.

(Testimony of Charles Lee Horsey, Jr.)

Q. As a matter of fact, Mr. Horsey, wasn't that your father's practice, during the many years that he practiced in Las Vegas, Nevada, prior to going to the Supreme Court, to come to the office late in the morning? A. It was.

Q. And there wasn't anything different in that practice after he returned, prior to his going to Carson City?

A. Except the part, leaving in the afternoons.

Q. But as far as coming to the office——

A. As far as coming to the office late in the mornings, no. No different.

Q. Now, I believe you testified, on the prior hearing, you testified did you not on the prior hearing? A. I did.

Q. Now, isn't it a fact, Mr. Horsey, that when Mr. Gardner stated to your father and in Mr. Gardner's office in Lovelock, that "I understand you are pro-labor" that your father said "I admit I am"—is that correct?

A. I think I just testified a few minutes ago [46] to that.

Mr. Wiener: That's all, Mr. Horsey.

(Witness excused.)

Mr. Souter: The Plaintiff rests, Sir.

(Recess taken of ten minutes.)

Mr. Thompson: We are ready to proceed, Sir.

The Court: Do you desire to make an opening statement first?

Mr. Thompson: No, your Honor. Well, I would

like to make a two-sentence statement, your Honor, so that the jury will understand this situation.

The Court: Very well.

(Opening statement made by defense counsel.)

Mr. Thompson: We would like, your Honor, to offer in evidence the deposition of Paul K. Gardner, the owner and publisher of the Lovelock Review-Miner, and I believe the clerk has the original of that deposition on file and we ask that it now be opened and published and we will handle the matter in any manner your Honor desires.

The Court: One of you will take the stand.

(Counsel Thompson takes witness chair.)

Mr. Wiener: Your Honor, for the purpose of the record at this time Mr. Thompson will read [47] the answers of Mr. Gardner to the questions propounded in the deposition by Mr. Rudiak, and I will read the questions which were propounded by Mr. Rudiak, and I will also note the objections that were made.

(Deposition quotation.)

DEPOSITION OF PAUL K. GARDNER

having been duly sworn, testified at Reno, Nevada, Friday, September 5th, 1952, as follows:

(Examination by Mr. Rudiak)

Mr. Wiener: Q. Will you please state your name for the record?

Mr. Thompson: A. My business name is Paul K. Gardner. G-a-r-d-n-e-r.

Q. Is that your true name?

(Deposition of Paul K. Gardner.)

A. That is my true name.

Q. What is your age, Mr. Gardner?

A. It is almost sixty—I am fifty-nine; I will be sixty in November.

Q. And where do you reside?

A. In Lovelock, Nevada.

Q. And how long have you resided in Lovelock, [48] Nevada? A. Over twenty-one years.

Q. Are you a married man? A. I am.

Q. What is your wife's name?

A. Ariel M. Gardner.

Q. And she, of course, also resides with you at Lovelock, Nevada? A. She does.

Q. What is your business, profession or occupation?

A. My business is publisher of the publication known as the Lovelock Review-Miner, editor and part-time printer.

Q. How long have you been engaged in that business? A. Twenty-one years.

Q. Is the Lovelock Review-Miner owned by you in your individual capacity, or is it a partnership or a corporation?

A. The publication is owned by Mrs. Gardner and me.

Q. As a family partnership?

A. We each have an undivided one-half interest.

Q. Who were the owners of the Lovelock Review-Miner during the month of October, 1950?

A. I was the sole owner.

Q. Then it was sometime since October, 1950,

(Deposition of Paul K. Gardner.)

that Mrs. Gardner acquired an undivided one-half interest in the business?

A. That is so, yes.

Q. And was that change in ownership evidenced by any instrument in writing?

A. It is a matter of record in the Pershing County Recorder's office.

Q. Could you tell us what form that conveyance or transfer took?

A. As I remember it, it was a deed. I think it was a deed drawn up by attorney Llewellyn Young of Lovelock.

Q. And that deeded the real estate upon which the place of business, that is, the Lovelock Review-Miner, is situated, to your wife, as to an undivided one-half interest; is that correct?

A. No. Mrs. Gardner or I, or either of us, have owned said real estate.

Q. And did that also transfer to her an undivided one-half interest in all the furniture, fixtures and equipment of your business? [50]

A. Yes.

Q. And approximately when did this transfer take place?

A. I would say a little over a year ago.

Q. Then until a little over a year ago you were at all times from the time that you first acquired this business the sole owner thereof.

A. That is true.

Q. Now, during October of 1950, on what day or days of the week was the Lovelock Review-

(Deposition of Paul K. Gardner.)

Miner published? A. On Thursdays.

Q. That is, it was a weekly publication?

A. That is right.

Q. And had it always been such from the time that you first commenced to operate it?

A. It had.

Q. And is it a weekly newspaper at the present time? A. It is.

Q. During the year 1950 in what parts of the State of Nevada did the Lovelock Review-Miner circulate?

A. The paper largely circulates in Lovelock and Pershing County. We have a few isolated copies go out to various towns.

Q. Is that mainly for purposes of maintaining [51] an exchange service with other newspapers?

A. Largely exchange, yes.

Q. During 1950 did you have any appreciable circulation in Clark County, Nevada?

A. I think we had one copy to go in there if I am not mistaken.

Q. Do you know to whom that copy was sent?

A. I am not the circulation manager. Therefore, I could not say exactly. We exchange with the Sun, but no other papers there. We may have one going to L. O. Hawkins, the former Judge.

Q. According to my recollection the Morning Sun was not in existence in 1950. Did you at that time maintain an exchange service with any other newspaper in Clark County, Nevada?

(Deposition of Paul K. Gardner.)

A. At one time we had one with that old gentleman—was that the Las Vegas Age?

Q. Would that be Mr. Charles Squires?

A. Yes.

Q. So far as you know during 1950 did you maintain an exchange service with the Las Vegas Review-Journal? A. No.

Q. Now, during the month of October, 1950, what was the approximate circulation of the Lovelock Review-Miner [52] in Pershing County, Nevada?

A. I would say between five and six hundred.

Q. And what was the total circulation of the Lovelock Review-Miner?

A. About eight hundred.

Q. And were the other three hundred copies sent to other portions of the State of Nevada?

A. All over the United States.

Q. Did you have an exclusively paid circulation, or was part of it a free circulation?

A. The free circulation consists of advertising companies and exchange papers only.

Q. Then all the rest of the circulation was a paid circulation? A. That is right.

Q. And about how much of that circulation was delivered by mail? A. All of it.

Q. You had no carrier service?

A. Now, wait a minute, the news-stand at that time I think was selling seventy papers in town.

Q. Aside from those seventy papers the rest were all delivered by mail?

(Deposition of Paul K. Gardner.)

A. Yes, and sales over the counter.

Q. During 1950 what was the approximate [53] population of Pershing County, if you know?

A. The 1950 census gave it at sixteen hundred and something—Pershing County or Lovelock?

Q. Pershing County.

A. It gave it as over three thousand.

Q. And did the 1950 census then show the population of Lovelock to be approximately sixteen hundred? A. Over sixteen hundred.

Q. Now, I understood you to say that in addition to publishing and editing the Lovelock Review-Miner during 1950, you were also engaged in the job printing business? A. That is true.

Q. Where was your printing shop maintained?

A. In connection with the publication.

Q. And at that time you were the owner of the property, I believe you testified?

A. True.

Q. Did you originally organize the Lovelock Review-Miner, or did you purchase it as a going concern from some other company?

A. I purchased one-half interest from W. C. Black in January of 1931. A year later I purchased the other half from my partner, a Mr. Morrison.

Q. At what location was your business carried on? [54]

A. We call it 1004 Cornell Avenue.

Q. That is in what city?

A. Lovelock, Nevada.

(Deposition of Paul K. Gardner.)

Q. During 1950 how many employees did you have on the Lovelock Review-Miner?

A. I had a foreman and apprentice in the back shop, and a part-time reporter.

Q. Did this same staff also do your job printing? A. That is true.

Q. And you personally worked in this business, of course?

A. Of commercial printing, yes.

Q. Did your wife participate with you in the management and operation of the business?

A. She is the Business Manager.

Q. And she daily devoted her time to the operation of the business? A. That is true.

Q. How many of your employees during the year 1950 were members of any labor organization?

A. My foreman is an outstanding member of the International Typographical Union, being a delegate to the national convention, and was fully paid up at that time. The apprentice was not eligible because he was just learning [55] the business.

Q. Will you please give us the name of your foreman?

A. Lloyd—I think his middle initial is C., I am not sure—Newton.

Q. Is he still employed by you at the present time? A. He is.

Q. Could you give us his address, please?

A. It is on Franklin Avenue, Lovelock, Nevada.

Q. And what was the name of the apprentice?

A. I have forgotten. He had a Hungarian name.

(Deposition of Paul K. Gardner.)

Q. Your payroll records, of course, would show his name? A. They would.

Q. Do you have them with you here today?

A. No, I don't.

Q. Would you have any objection to obtaining his name and address and forwarding it to the reporter to become a part of your answer to the preceding question?

A. He is now somewhere in the Army, but I have no objection to trying to find his address.

Q. Will you please get us his name and address [56] if you are able to find it? A. I will.

(Reporter's Note: In answer to the question propounded on line 26, page 11, I am in receipt of a letter from Mr. Paul K. Gardner dated September 10, 1952, which is quoted below and is self-explanatory.)

September 10, 1952

Mr. Marvin M. Wilhoit,
Official Reporter, District Court, Reno, Nevada
Dear Mr. Wilhoit

Regarding information desired for the record:

Donald Chunat, who worked for us as an apprentice from June 3, 1950 to November 28, 1951. He is now in the armed services and we do not know his address. His parents live in the small town of Wauzeka, Wisconsin. He was 18 years old when he came to work for us.

Francis Lynne Peters, known to us as "Lynne Peters," came through here with his family about six months ago. He said he was going to the vet-

(Deposition of Paul K. Gardner.)

erans hospital at Boise, Idaho for an operation. We have not heard from him since and so far as we know no one in town has heard from him. So we don't know where he is. His native home was Sco-bey, Montana, a small town, where he could find only part time work when we employed him in July, 1938.

A copy of this letter is being sent to the law firm of Ralli, [57] Rudiak & Horsey in Las Vegas.

Yours very truly,

/s/ Paul K. Gardner

Paul K. Gardner, Publisher

Q. Would you please give us the name of your part-time reporter who was employed by you?

A. Mrs. Florence Young.

Q. Is she still employed by you?

A. She is.

Q. And what is her address?

A. Dartmouth Avenue, Lovelock, Nevada.

Q. Do you at present employ additional employees? A. No.

Q. Then I take it from your previous answers that the only member of the labor organization who was employed by you during 1950 was Mr. Lloyd Newton? A. And the apprentice.

Q. Was the apprentice also a member of a labor organization? A. No.

Q. Prior to the month of October, 1950, had any representative of a labor organization ever attempted to or actually organize your employees?

A. No. [58]

(Deposition of Paul K. Gardner.)

Q. Prior to the month of October, 1950, had any representative of a labor organization ever attempted to or actually organize your employees?

A. No.

Q. Prior to October 26, 1950, have any labor organization made demands upon you to enter into a collective bargaining agreement? A. No.

Q. Did you during 1950 have a collective bargaining agreement with the International Typographical Union? A. No.

Q. Did you pay your foreman, Mr. Lloyd C. Newton, the union scale of wages for his type of employment? A. Yes.

Q. And what was that scale during 1950?

A. \$100.00 a week for forty-four hours, and time-and-a-half for overtime.

Q. Are you at the present time a party to any collective bargaining agreement with any labor organization? A. No.

Q. Prior to the month of October, 1950, had any labor organization made demands upon you for union recognition? [59] A. No.

Q. Prior to the month of October, 1950, had any labor organization made demands upon you for a closed-shop or a union shop? A. No.

Q. Prior to the month of October, 1950, had any labor organization made demands upon you relative to wages, hours or working conditions?

A. No.

Q. Have you ever been involved in a labor dispute with your employees? A. No.

(Deposition of Paul K. Gardner.)

Q. Has your business ever been involved in a strike? A. No.

Q. In a lock-out? A. No. [60]

Q. In a boycott maintained by labor organizations? A. No.

Q. Have you ever been denied the use of a union label?

A. Not being large enough to be a union shop, we cannot have a union label.

Q. Then you do not now have a union label?

A. We do not.

Q. Then if I understand your answers correctly, although you paid the union scale of wages to your foreman, you did not maintain a union shop as that term is generally understood?

A. We do not.

Q. Did you also pay your apprentice the union scale for apprentices? A. I do not know.

Q. What was his rate of compensation during 1950? A. I believe it was \$42.00 a week.

Q. For how many hours? A. Forty-four.

Q. You state that you believe that was it, Mr. Gardner. You are not positive that that was the amount you paid him? [61]

A. Just when we started paying him, for a short while we paid him \$36.00; then we jumped him to \$42.00. I don't know when that was.

Q. How long was he with you in all?

A. He came to stay six months and stayed a year and a half.

Q. And he went directly into the service from

(Deposition of Paul K. Gardner.)

his employment with you? A. He did.

Q. Do you feel that either your circulation as a newspaper or your business as a job printer has been adversely affected by the fact that you have not had the union label? A. No.

Q. Are there any other printing establishments in Lovelock, Nevada? A. No.

Q. And what is the nearest town at which there is a printing establishment?

A. Winnemucca, Nevada.

Q. And how far is that from Lovelock?

A. Seventy-two miles.

Q. Now, the salaries that you have mentioned were the salaries that you paid to your employees during 1950, were they not? [62] A. Yes.

Q. And what were the earnings of your wife and yourself from this business during the same period of time?

A. After deductions the joint income was under \$5,000.00 for both of us.

Q. Then you and your wife both devoting full time to the business were actually earning less than your employees? A. That is true.

Q. Are you a college graduate?

A. I am a graduate of the Drake University, Des Moines, Iowa; I have a Master's Degree from Iowa State College, Ames, Iowa. I did advance work at the University of Iowa. I took a semester at the University of Grenoble, France, and studied in the School of Journalism at the University of Iowa.

(Deposition of Paul K. Gardner.)

Q. And what was your degree received?

A. It was in English, a minor in geology.

Q. And is your wife also a college graduate?

A. She is a graduate of the University of Iowa and holds a Master's Degree from the University of Columbia, New York City.

Q. And in what field did she receive her Master's Degree? [63]

A. In education.

Q. To what, if anything, did you attribute the fact that the joint earnings of your wife and yourself were less than that of your employees?

Mr. Wiener: I object on the ground it is not relevant and material, outside the scope of the issues, and calls for the opinion and conjecture on the part of the witness.

By Mr. Rudiak:

Q. You may answer the question subject to counsel's objection.

A. I would say because of high costs.

Q. And among those costs, of course, you would include primarily the wages of your employees?

A. Wages, materials and rents.

Q. I believe you testified that you owned the property.

A. I just own the equipment. I own the publication, including equipment. I do not own the building.

Q. At all times you rented the building?

A. That is right.

Q. What rents were you paying for it in 1950?

A. \$50.00.

(Deposition of Paul K. Gardner.)

Q. Is that \$50.00 per month?

A. Per month, yes. [64]

Q. And what was your monthly payroll to all your employees?

A. Now, you are talking about 1950?

Q. That is correct.

A. I was paying \$60.00 and guaranteed all maintenance of the building.

Mr. Gray: You are talking about rent now?

The Witness: Yes.

Mr. Gray: Back in 1950 it was \$60.00?

The Witness: \$60.00, yes. It was \$60.00 and the owner has no expense whatsoever in keeping it up.
By Mr. Rudiak:

Q. You are bound to make all repairs, is that right? A. All repairs, yes.

Q. And what was your monthly payroll during the same period?

A. I would have to figure that out.

Q. Just take your time.

A. Without overtime, roughly \$660.00.

Q. Was there often overtime?

A. Yes. [65]

Q. Can you estimate to what extent that might have increased the monthly payroll on the average?

A. As much as \$50.00.

Q. For each employee?

A. No; for one.

Q. Now, what was the approximate average cost of the materials that you used in your business in any given month?

(Deposition of Paul K. Gardner.)

A. I couldn't tell you that.

Q. Would you say that the cost of materials would be equal to the cost of labor?

A. They are greater.

Q. And what materials do you include in that?

A. Now, I am talking about materials, rent, all expenses. If you want expenses outside of labor, freight, express, postage, telegrams, insurance, upkeep on the business car, repairs, supplies, paper.

Q. Mr. Gardner, I wonder if you would confine yourself first to an answer to the specific question that I asked relative to materials which you used in your business.

A. I believe between \$8,000.00 and \$9,000.00—wait a minute; I really can't answer that. I wasn't instructed to bring anything and I didn't bring it. I could have brought it. [66]

Q. When you say \$8,000.00 or \$9,000.00 expenses, you are referring to the annual expense of all other operating expenses other than rent and labor; is that it? A. Yes.

Q. And you include in that, materials, utilities, insurance, upkeep on the car, and the other items that you have just mentioned? A. Yes.

Q. And you are unable at this time to make a breakdown as to how much of that would be for materials? A. I am.

Q. The automobile that you mentioned, of course, is used for your personal use as well, is it not? A. No, it is not.

Q. Do you have another car?

(Deposition of Paul K. Gardner.)

A. Yes, another car.

Q. Would it be correct to say that the cost of your labor represented at least one-half of your total cost of operation of the business? A. No.

Q. What percentage did it represent?

Mr. Gray: That is, if you know, Mr. Gardner.

The Witness: I know in a general way that expenses are greater than labor. I will have to [67] figure it up. I would say that the expenses were at least \$1,000.00 greater than the cost of labor.

Q. (By Mr. Rudack): And in those expenses you include the rent, do you? A. Yes.

Q. Now, isn't it a fact, Mr. Gardner, that when you say \$1,000.00, you refer to \$1,000.00 a year, do you not? A. Difference, yes.

Q. Isn't it a fact, Mr. Gardner, that for a long period of time you had felt somewhat aggrieved because your employees had for years been earning more than your wife and yourself, although your wife and yourself were college graduates and the owners of the business?

A. That is not true.

Q. Do you recall an interview which you had with Justice Charles Lee Horsey, the gentleman seated here to my left, in the month of October, 1950, at your place of business?

A. I remember part of it, yes.

Q. Do you recall that in the course of that interview you informed Justice Horsey that your employees were earning more than your wife and

(Deposition of Paul K. Gardner.)

yourself, who were college graduates and the owners of the business? [68]

The Court: It is now four o'clock. We will take our afternoon adjournment at this time, until tomorrow morning at ten o'clock.

(Jury admonished, excused. Court adjourned.)

Tuesday, Sep. 28, 1954, 10:00 o'clock a.m.

The Court: This is the case of Charles Lee Horsey vs. Southwestern Publishing Company, Inc., I think it would be well for the Clerk to call the roll of the venire.

(Clerk calls roll of jurymen.)

The Court: Will counsel stipulate that all members of the jury are present, and the alternate?

Mr. Souter: So stipulated, Sir.

Mr. Thompson: So stipulated, your Honor.

The Court: You may proceed.

(Mr. Paul K. Gardner's deposition still being read by counsel, with Counsel Bruce Thompson in the witness stand, and Counsel Louis Wiener reading the interrogation.)

Mr. Wiener: We were on page 21, if the Court please. Line 26.

(Question re-read, and quotation of deposition continued.) [68-A] A. I do not.

Q. Would you say that you did not make such a statement to Justice Horsey?

A. I would say neither way; I don't remember anything of the kind.

Q. You don't remember making such a state-

(Deposition of Paul K. Gardner.)

ment? A. No.

Q. Do you remember making a statement to the effect that your employees were earning more than your wife and yourself? A. To whom?

Q. To Justice Horsey?

A. I do not remember.

Q. Or did you make such a statement in his presence on that occasion?

A. I do not remember.

Q. Can you state positively that you did not make such a statement? A. I would not.

Q. In other words, you might have made such a statement? A. Sure.

Q. Isn't it a fact that on the occasion mentioned you also informed Justice Horsey that you felt that [69] labor was too powerful and that it was run by racketeers and highbinders?

A. I do not remember.

Q. Would you state positively that you did not make such a statement? A. No.

Q. Then is it a fact that you might have made such a statement on that occasion?

A. I could have.

Q. Isn't it a fact that on the occasion mentioned you also informed Justice Horsey that your earnings had been curtailed by corporations which now printed legal and business forms which you had formerly printed and sold?

A. I don't remember.

Q. Would you be able to state positively that you did not make such a statement?

(Deposition of Paul K. Gardner.)

A. No.

Q. Then it is a fact that you might have made such a statement? A. I could have.

Q. Isn't it a fact that you were, in fact, resentful because the earnings of your wife and yourself were not greater, although you were the owners of the business and both college graduates?

A. No. [70]

(End of quotation.)

Mr. Horsey: May it please the Court, the plaintiff objects to the introduction in evidence of—commencing with line 23 of page 23, of said deposition, and continuing down to page 26, line 24, on the ground and for the reason that said evidence is incompetent, irrelevant, and immaterial, and has nothing to do with the issues in this case.

The Court: The objection is sustained.

Mr. Wiener: For the purposes of the record, I think it should be——

The Court: All right, it will be deemed to have been offered and the offer is refused, objection sustained.

Mr. Wiener: At this time, if your Honor please, the defendants also offer that portion of the deposition commencing with line 9, page 32, to line 11, page 41.

Mr. Horsey: To which the plaintiff objects on the same ground and for the same reasons as previously offered.

The Court: Same ruling. The objection is sustained. The offer is rejected in both instances.

(Deposition of Paul K. Gardner.)

Mr. Wiener: Now, commencing with line 12, [71] page 41.)

(Quotation continuing, with Counsel Thompson on the witness stand, Counsel Wiener reading the interrogation.)

Q. During the year 1950, and prior to October 26th of that year, did you have any conversation or communication by any means relative to or involving Supreme Court Justice Horsey with any other person in the State of Nevada?

A. Yes.

Q. Who was that person or persons?

A. I am not sure.

Q. Do you remember the occasion in which Judge Horsey's name was mentioned?

A. I do not.

Q. But you do know that you had such a conversation? A. I do.

Q. Was it a resident of Lovelock, Nevada?

A. It is very vague in my mind.

Q. Do you remember the circumstances under which Justice Horsey's name was mentioned to you?

A. I do not.

Q. And you don't recall who the person was who brought up the subject? [72]

A. I do not.

Q. And was there more than one occasion at which Justice Horsey's name was mentioned to you prior to October 26th and during the year 1950?

A. I don't believe so.

Q. Are you acquainted with Justice Horsey?

(Deposition of Paul K. Gardner.)

A. I have only met him once that I know of, unless he might have been in the receiving line of a Governor's Ball once.

Q. What is the occasion at which you recall meeting him?

A. Besides the Governor's Ball?

Q. That is right.

A. When he called at my office in October of 1950.

Q. Do you recall whether or not you met Justice Horsey during the political campaign of 1946?

A. No.

Q. Would you say that you did not meet him, or that you do not remember?

A. My memory is absolutely vacant on that.

Q. Then the only two occasions that you remember are the Governor's Ball and the occasion when Justice Horsey called upon you in October of 1950?

A. I don't remember meeting him at the Governor's Ball.

Q. Then your original statement that you only met him on one occasion is the best of your present recollection?

A. I think so. If he was in the receiving line, I met him.

Q. To refresh your recollection do you recall who were the candidates for Justice of the Supreme Court during the political campaign of 1946?

A. No, I don't.

Q. If I were to tell you that the two opposing candidates were Justice Horsey and the present

(Deposition of Paul K. Gardner.)

Attorney General, Mathews, would that refresh your recollection of the event? A. No.

Q. Did your newspaper take any editorial stand on that election in 1946? A. No.

Q. Had your newspaper taken any editorial stand in any other prior or contested election for the office of Justice of the Supreme Court?

A. No.

Q. This occasion in October of 1950 was the first time that you had ever written an editorial relative to [74] the qualifications of a candidate for office of Justice of the Supreme Court?

A. Yes. I would qualify that, to the best of my knowledge.

Q. Now, you do recall a conversation that you had with Justice Horsey in the month of October, 1950?

A. I remember we had a conversation.

Q. Can you tell us approximately when that conversation occurred in the month of October, 1950?

A. I don't know. It was before the election.

Q. You do recall the editorial which appeared in the October 26th, 1950, issue of the Lovelock Review-Miner relative to Justice Horsey, which is the subject of this action? A. I do.

Q. And about how long before the publication of that editorial would you say that you met Justice Horsey at your office?

A. I would say either five days or twelve days.

Q. Now, that issue of the Lovelock Review-

(Deposition of Paul K. Gardner.)

Miner in which the editorial appeared came out on the regular publication date, that is, Thursday?

A. Yes.

Q. And you would say, then, that it was [75] either the preceding Saturday, or the Saturday a week before that you met Justice Horsey?

A. Saturday or Friday, some place along there, yes.

Q. Of either the week immediately preceding publication or the week before that?

A. That is right.

Q. And where did this conversation take place?

A. In the office of the Review-Miner.

Q. And who was present at that time?

A. Justice Horsey; a young man that he introduced as his son, and he was acting as his driver, who I remember was in the insurance business in Las Vegas. I believe he wore glasses and was slightly larger than I am.

Q. Were there any other persons present during this conversation? A. No.

Q. Following this interview with Justice Horsey at your office, did you have any further conversations or communications by any means with Justice Horsey? A. No.

Q. You have never communicated with him from that day until this?

A. No, not that I know of.

Q. Following your conversation with Justice [76] Horsey on this occasion in the month of October, 1950, and before publication of your edi-

(Deposition of Paul K. Gardner.)

torial on October 26, 1950, did you have any communication or conversation with any person or persons residing in Clark County relative to your interview with Justice Horsey or relative to his qualifications for office, or relative to your proposed editorials? A. No.

Q. Following your conversation with Justice Horsey and before publication of your editorial on October 26, 1950, did you have any communication or conversation with any person relative to your interview with Justice Horsey, his qualifications for office, or your proposed editorial?

A. Not that I remember.

Q. Well, would you say positively that you had no such conversations or communications?

A. My memory is no.

Q. Would you state positively, then, that you had no such communication or conversation?

A. I would say positively I had none.

Q. And did you discuss your proposed editorial with anyone following your interview with Justice Horsey and prior to publishing it? A. No.

Q. How soon after the interview did you write your editorial? [77] A. I don't know.

Q. Well, was it written the same day or the next day or a week later?

A. I remember I took notes on it.

Q. You took notes while you were talking to Justice Horsey?

A. Immediately after he left.

(Deposition of Paul K. Gardner.)

Q. Do you still have those notes in your possession? A. No.

Q. What has happened to them?

A. I save stuff like that about a month and then destroy it.

Q. How soon after making those notes did you actually write your editorial?

A. Before the publication came out in which it appeared.

Q. But you couldn't state whether it was within a day or two after the interview or immediately before the time of publication?

A. I don't remember.

Q. Is it your practice as a newspaper publisher and editor to discuss editorials which are controversial in their nature with any other person prior to publishing them?

A. No. Since my wife became a partner we [78] often discussed things.

Q. But that was not your practice in October of 1950? A. No.

Q. Now, returning to your interview with Justice Horsey, just what was said to the best of your recollection? A. By both of us?

Q. Just repeat the conversation as best—as you remember it.

A. He came down and came in and introduced his son and sat down in the guest chair and told about his mission. That is all I remember of that part of it.

Then I said to him something to this effect:

(Deposition of Paul K. Gardner.)

“What about the report that you are pro-labor?”
He arose and started walking the floor. I remember he took off his nose glasses and shook them up and down, and he said to this effect: “I admit that I am pro-labor. The decisions of the Nevada Supreme Court are pro-labor. Therefore I am pro-labor.”

Q. Was that the substance of the conversation?

A. That is all I remember—no, it isn’t either. I said to him, “Don’t the Supreme Court ever change its decisions? The United States Supreme Court changes its mind.” [79]

As I remember it there was no answer to that.

Q. Was any mention made in the course of your conversation with Justice Horsey of the so-called White Cross decision of the Supreme Court of the State of Nevada?

A. Not that I remember.

Q. Was any mention made during the course of the interview as to Justice Horsey’s prior record as a member of the State Legislature of the State of Nevada with reference to legislation commonly called “labor legislation?”

A. No.

Q. Did you question Justice Horsey at that time as to what he meant by his statement to you when he allegedly admitted that he was pro-labor?

A. No.

Q. The word “pro-labor” had a definite meaning to you at that time?

A. As expressed in my editorial, yes.

Q. Now, why did you ask Justice Horsey about this alleged report that he was pro-labor?

A. I was very anxious for Justice Horsey to

(Deposition of Paul K. Gardner.)

come because I wanted to get acquainted with him and sound him out on this thing. My mind at the time was entirely open toward the Judge. When he came in I was happy that he arrived so that I could ask him the question. [80]

Q. Had you any reason to believe that he was pro-labor prior to the time that he arrived?

A. I did.

Q. And what was the source of that information?

A. I don't know.

Q. You surely didn't get it out of thin air. Do you recall who it was that gave you that thought?

A. I do not, I haven't the least idea.

Q. Could it have been from some publication of the Nevada Citizens Committee which you received?

A. I don't believe so.

Q. But it could have been?

A. It was from some person, some person well up in Nevada life, but I don't know who it was.

Q. And you took the word of this person at that time?

A. To form the question.

Q. Did you make any attempt to investigate Justice Horsey's record prior to the time of the interview to find out whether or not he was pro-labor?

A. I did not.

Q. Did you attempt after your interview with Justice Horsey to further investigate his record in regard to such matters? [81]

A. I took his own word for his stand on labor matters.

(Deposition of Paul K. Gardner.)

Q. About how long did your conversation with Justice Horsey last in all?

A. I would say five minutes.

Q. And was the gentleman who was introduced to you as his son present during all of that conversation? A. Yes.

Q. At this time I will ask you, Mr. Gardner, whether you have with you a copy of the October 26, 1950, issue of the Lovelock Review-Miner?

A. I have.

Mr. Rudiak: I will ask the reporter to mark that Exhibit A. May the record show that counsel stipulate that Exhibit A annexed to this deposition is a true copy of the issues of the Lovelock Review-Miner published on October 26, 1950?

Mr. Wiener: We will so stipulate.

(A copy of the October 26, 1950, edition of the Lovelock Review-Miner was marked Plaintiff's Exhibit A by the Notary Public.)

Mr. Rudiak: It is also stipulated that the reporter may copy from page 1 of Exhibit A an editorial entitled "Your Editor Plans to Vote Against Justice Horsey on [82] November 7th."

(End of quotation.)

Mr. Wiener: At this time, if your Honor please, we would like to offer in evidence, the copy of the editorial, dated October 26, 1950, and ask that it be marked as Defendants' Exhibit A.

The Court: Defendants' Exhibit A.

Mr. Horsey: No objection.

(Deposition of Paul K. Gardner.)

The Court: It will be admitted in evidence. Defendants' Exhibit A.

Mr. Wiener: Now, commencing again on page 52 of the deposition. By Mr. Rudiak.

(Quotation, line 1, page 52 continuing)

Q. You stated a few moments ago in response to one of my questions that Justice Horsey said to you that, "The decisions of the Nevada Supreme Court are pro-labor, and therefore I am pro-labor."

Did you repeat the full contest of this statement in your editorial which appeared in the October 26, 1950, issue of the Lovelock Review-Miner?

A. So far as I remember, I did.

Q. Now, in the course of his conversation with you on the occasion that we have been discussing, did Justice [83] Horsey inform you that he was in favor of labor racketeers?

A. No.

Q. Now, in the course of his conversation with you did Justice Horsey make use of the words, "labor racketeers"?

A. No.

Q. Exactly what is it that he told you relative to his attitude towards labor?

A. Exactly what I have told you.

Q. For clarification would you explain that to us again?

A. As I remember it he said, "I admit I am pro-labor. The decisions of the Supreme Court of Nevada are pro-labor. Therefore, I am pro-labor."

Q. And he didn't further qualify his statement?

A. I don't remember anything else.

(Deposition of Paul K. Gardner.)

Q. Can you state positively that he didn't further qualify his statement?

A. I would say positively I don't remember anything else.

Q. Well, just answer my questions, please. Will you state positively that Justice Horsey did not further qualify his statement to you at that time?

A. Not to my knowledge. [84]

Q. Then you would say that it is possible, in accordance with your present state of recollection, that he did make some qualifying statement?

Mr. Gray: He didn't say anything of the kind, counsel.

Mr. Rudiak: Well, it is the converse, Mr. Gray.

Mr. Gray: That is argumentative.

The Witness: For the first time, last night, I saw a copy of your complaint, and I was startled at the addition to what is claimed to have been in that conversation, because so far as it was concerned, my mind was a perfect blank.

There is something that I left out, if you want it. At the end of his statement he laughed.

By Mr. Rudiak:

Q. Mr. Gardner, did you discuss your editorial with anyone after its publication on October 26, 1950, and before the time of the election which took place on November 7, 1950?

A. No, not that I know of.

Q. Did you have any communications with anyone relative to your editorial between the time of

(Deposition of Paul K. Gardner.)

its publication and the election on November 7, 1950?

A. Somebody called me up from Las Vegas by [85] telephone.

Q. Who was that? A. I don't know.

Q. Didn't this person identify himself to you?

A. He acted as if he knew me, called me by my first name, but I don't know who it was.

Q. He didn't tell you who he was?

A. He did, but I don't know who it was now.

Q. And approximately when did that happen?

A. That happened before this publication was made in the Las Vegas newspaper.

Q. Was it Mr. A. E. Cahlan who called you at that time? A. I couldn't tell you.

Q. Was it Mr. John F. Cahlan? A. No.

Q. Was it Mr. Wilson Baden whose name has been mentioned here before?

A. I don't know.

Q. What was the substance of the conversation that took place at that time?

A. He called attention to my editorial, and as I remember, had prepared a statement which was read to me. This person asked me if it could be used, and I said, "No, [86] not with my consent."

He said, "Can we use your editorial?" I said, "I can't prevent you from using my editorial because it isn't copyrighted."

Q. Did he tell you what use he proposed to make of the copy that he read you over the telephone? A. Some kind of a political ad.

(Deposition of Paul K. Gardner.)

Q. Did this phone call come from Las Vegas, Nevada? A. Yes.

Q. Had you ever had any previous conversation with the person who called you on that day?

A. I didn't recognize his name at all, although he called me "Paul", but I didn't recognize him.

Q. And the copy that he read you over the phone, was that the same copy that later appeared in the advertisement in the Las Vegas Review-Journal? A. No.

Q. Have you ever seen the advertisement in the Las Vegas Review-Journal?

A. The one that finally came out?

Q. Yes. A. Yes.

Q. And you first saw that last night when you read your complaint? [87] A. Yes.

Q. And you are quite certain in your own mind, although approximately two years have elapsed since that time, that the copy that was read you over the telephone is not the same copy as appeared in the advertisement in the Las Vegas Review-Journal?

A. Yes, I am very definite about that.

Q. Why did you refuse him permission to print the proposed copy?

A. Well, after two years I have a vague memory that it was not fitting; it did not fit into what I had said. There may have been additions to it or interpretations of it, I don't know, for sure.

Q. How long have you been in the newspaper business in Nevada in all, Mr. Gardner?

(Deposition of Paul K. Gardner.)

A. Twenty-two years nine months.

Q. In your experience as a newspaper editor and publisher have you ever seen the name of any person printed completely in lower case letters in any newspapers circulated in the State of Nevada prior to the time that you saw our complaint last night? A. No.

Q. During the war years did you ever see the name of Hitler or the name of Stalin printed entirely in lower case letters in any newspaper circulated in the State of [88] Nevada? A. No.

Q. That would, of course, include newspapers published outside the State of Nevada?

A. I have never seen it.

Q. Does the use of lower case letters entirely in printing the given name and surname of the person referred to in a newspaper story or advertisement have any special meaning or connotation in the newspaper business in Nevada that you know of? A. Not to my knowledge.

Mr. Rudiak: That is all.

Mr. Gray: We have no questions.

(End of Quotation.)

Mr. Wiener: We will call Mr. Cahlan.

A. E. CAHLAN

having been first duly sworn, called as a witness on behalf of the defendants, took the stand and testified as follows:

Direct Examination

By Louis Wiener, Jr. [89]

Q. Will you state your name, please?

A. A. E. Cahlan.

Q. And are you one of the defendants in this action? A. I am.

Q. And what is your present business or occupation?

A. General manager of the Southwestern Publishing Company.

Q. That is the publisher of the Las Vegas Review-Journal? A. That is right.

Q. Are you acquainted with the plaintiff in this action, Charles Lee Horsey? A. I am.

Q. And how long have you known him?

A. Twenty-eight years.

Q. And you knew him when he first came to Las Vegas, Nevada? A. I did.

Q. Now, during the course of your acquaintance with Judge Horsey, have you ever had the relationship of attorney and client with him?

A. I have.

Q. And in that relationship Judge Horsey [90] represented the Las Vegas Review-Journal?

A. That is right.

Q. Now, during your period of acquaintanceship with Judge Horsey, since 1926, did you support or

(Testimony of A. E. Cahlan.)

oppose Judge Horsey in any electionship in which he was a candidate? A. I supported him.

Q. Now, do you remember the first campaign in which you supported Judge Horsey?

A. I think it was the year he ran for congress. The first time.

Q. Now, at the present time, Mr. Cahlan, do you hold any feeling of animosity toward Judge Horsey? A. Certainly not.

Q. At the time of the publication of the advertisement on November 5, 1950, which is marked Plaintiff's Exhibit 3, did you have any personal animosity toward Judge Horsey?

A. I did not.

Mr. Wiener: No further questions.

Cross Examination

By Clyde D. Souter:

Mr. Souter: Q. Mr. Cahlan, you were one [91] of the organizers of the Nevada Citizens Committee, were you not? A. I was not.

Q. You attended the first organization meeting and addressed it, did you not? A. I did not.

Q. And if the records of the Nevada Citizens Committee, which are here in Court, indicate your presence and the fact that you did address it, you would say that those records are incorrect?

A. I would say that they were, and may I explain my answer?

Q. Yes.

A. When the Nevada Citizens Committee was

(Testimony of A. E. Cahlan.)

originally formed I was advised of the formation of the Citizens Committee and asked whether or not I would accept a directorship on that committee. I was informed, as I recall it, that I had been chosen as one of the directors. I told them I would prefer not to serve.

Q. And did you attend the first meeting, and in order to discuss that situation with them?

A. My recollection, Judge, is that they had the first meeting at the Last Frontier Hotel, and I did not attend.

Q. Were you ever a member of the Publications [92] Committee? A. I wasn't.

Q. And if the records of the Nevada Citizens Committee show that you were, that was a mistake?

A. Judge, let me explain it this way: I think they chose a lot of people at those meetings, sometimes, and then never notified them that they were chosen. So far as I am concerned during that particular campaign, I took very little part with the Nevada Citizens Committee.

Mr. Souter: That is all, Mr. Cahlan.

Mr. Thompson: The defense rests, your Honor.

Mr. Souter: May we approach the bench?

The Court: Certainly.

(Counsel approach bench.)

Mr. Souter: At this time, if the Court please, I offer in evidence on behalf of the plaintiff, the general election returns of 1946, for the state of Nevada. The original returns.

Mr. Wiener: To that offer, your Honor, we ob-

ject on the ground that the offer, without being offered, is wholly irrelevant and immaterial. That it is speculation. Remote and prejudicial to receive such a document in evidence in this action. [93]

Mr. Souter: It is not offered, if the Court please, for the purpose of anything connected with the loss of an election, it is offered for—purely and simply as possible evidence of the effect of the advertisement in question upon the people of Clark County.

The Court: When it was first offered I was inclined and did rule against the admission of that evidence on the theory that the loss of an election had no bearing upon any of the merits of this case, but now, in view of the statement of counsel, as to its limited purpose, as a circumstance intending to show the effect of the publication in Clark County, it will be admitted in evidence.

(Exhibit 2-A admitted in evidence.)

Now, what number is that?

Clerk: Number four, Sir.

The Court: It will be number five. Give it the number next in order. We rejected number four, that was an offer of one of the Supreme Court decisions of the state of Nevada.

Mr. Souter: It had never been marked.

The Court: Well, that exhibit of the Supreme Court decision, rejected, should be marked 4. And this one, next in order.

Clerk: That will be re-numbered 5.

(Exhibit 2-A renumbered to Exhibit 5.) [94]

The Court: Exhibit 5. Very well.

Mr. Souter: The Plaintiff rests, Sir.

The Court: If there is no further testimony on this occasion, we will excuse the members of the jury until two o'clock this afternoon. I would like to see counsel in chambers.

(Adjournment at 11:00 o'clock a.m.)

Tuesday, Sept. 28, 1954, 2:00 o'clock p.m.

The Court: May the record show the presence of the parties and counsel, and that the jury is not present.

The Court now informs the parties and their counsel that the Court proposes to give instructions numbered one to seventeen inclusive, copies of which counsel have, and at this time the Court will entertain any objections which the counsel for the plaintiff have to the proposed instructions, numbered one to seventeen inclusive.

Mr. Souter: We have none, Sir.

The Court: And have counsel for the defendants any objections to proposed instructions numbered one to seventeen inclusive? [95]

Mr. Wiener: No, your Honor.

(Jury called in.)

(Opening statement to the Jury on behalf of the Plaintiff made by Mr. Souter.)

(Followed by statement to the Jury on behalf of the Defendants first by Mr. Thompson, followed by Mr. Wiener.)

(Recess taken at 3:30 o'clock p.m.)

After Recess.

The Court: You have completed your argument to the Jury, Mr. Wiener.

Mr. Wiener: We have, your Honor.

The Court: Very well.

(Closing argument given to the Jury by Mr. Souter.)

(Instructions read to Jury by the Court.)

(Alternate Juror Mr. Balance excused.)

The Court: Now, the Court will be in recess awaiting the pleasure of the Jury.

(Exhibits given to Jury. Jury retired at 4:15 o'clock p.m.)

Evening Session, Tues., Sept. 28, '54, 11 o'clock p.m.

The Court: The record will show the presence of the parties and their counsel. The clerk will please call the roll of the venire.

(Roll taken of members of Jury.)

The Court: Ladies and gentlemen of the Jury, have you reached a verdict in the case on trial here?

Mrs. Hall: We have, your Honor.

The Court: Will you please hand it to the marshal?

(Verdict handed to marshal, then to the Court, and then to the Clerk, who reads.)

Clerk: United States District Court for the District of Nevada, Case No. 1025, Charles Lee Horsey, Plaintiff, vs. Southwestern Publishing Company, Inc., a Nevada corporation; A. E. Cahlan; and Nevada Citizens Committee Incorporated, Southern Nevada Chapter, a Nevada corporation, defendants.

Verdict. We, the jury in the above-entitled case, find in favor of the plaintiff and against the defendants in the amount of \$10,000.00 as compensatory damages, and \$15,000.00 as punitive damages. Dated this 28th day of September, 1954. Signed, Barbara Hall, foreman.

Is that your true verdict?

Jury: It is.

Clerk: So say they all, your Honor.

The Court: Does counsel desire to have [97] the Jury polled?

Mr. Thompson: We do not.

Mr. Souther: We do not.

(Brief statement given by the Court to the Jury. Court adjourned 11:30 o'clock p.m. [98])

[Endorsed]: Filed March 8, 1955.

[Endorsed]: No. 14738. United States Court of Appeals for the Ninth Circuit. Southwestern Publishing Co., Inc., a corporation, A. E. Cahlan, Nevada Citizens Committee, Incorporated, Southern Nevada Chapter, a corporation, Appellants, vs. Charles Lee Horsey, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed: April 25, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14738

CHARLES LEE HORSEY,

Plaintiff-Respondent,

vs.

SOUTHWESTERN PUBLISHING CO., INC.,

et al.,

Defendants-Appellants.

STATEMENT OF POINTS

The points upon which the appellants, and each of them, will rely on appeal are:

1. The damages awarded are grossly excessive.
2. The damages awarded are contrary to law.
3. The verdict and judgment entered pursuant thereto are contrary to law.
4. The verdict and judgment entered pursuant thereto are contrary to the evidence.
5. The verdict is excessive and appears to have been given under the influence of passion and prejudice.
6. The Court erred in admitting irrelevant and incompetent evidence by plaintiff, over defendants' objection, as follows: Election returns for Clark County, Nevada, for 1946 and 1950, setting forth the number of votes cast in each of said elections for the office of Justice of the Supreme Court of the State of Nevada.
7. The Court erred in granting a motion for new trial to plaintiff.

8. The Court erred in refusing to grant a new trial to defendants on the second trial of said action.

9. The Court erred in refusing to direct a verdict in favor of the defendants and each of them.

JONES, WIENER & JONES,

/s/ By HERBERT M. JONES,

Attorneys for Defendants-Appellants Southwestern
Publishing Co., Inc., and A. E. Cahlan

BRUCE R. THOMPSON, HOWARD

GRAY and MILTON W. KEEFER

/s/ By MILTON W. KEEFER,

Attorneys for Defendant-Appellant Nevada Citi-
zens Committee, Incorporated, Southern Nev-
ada Chapter

[Endorsed]: Filed May 6, 1955. Paul P. O'Brien,
Clerk.